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CHAPTER 2A—LOAD LINES FOR AMERICAN VESSELS

SUBCHAPTER II—LOAD LINES FOR VESSELS ENGAGED IN COASTWISE TRADE

§ 88. Establishment; vessels affected; exemptions

[*See main edition for text of* (a)]

(b) The requirements of this subchapter shall not apply to (1) all cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska which were constructed, or with respect to which construction was begun or contracted for, before January 1, 1980, or which were converted to such use, or with respect to which conversion to such use was begun or contracted for, before January 1, 1980, so long as such conversion was completed before January 1, 1983 (in the case of conversions); or (2) all vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, except those constructed after August 15, 1974, or those converted to any of such services after January 1, 1983.

(As amended July 1, 1977, Pub. L. 95-61, § 7(c), 91 Stat. 260; June 30, 1978, Pub. L. 95-308, § 6, 92 Stat. 358.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-308 substituted "The requirements of this subchapter shall not apply to (1) all" for "All", and "which were constructed, or with respect to which construction was begun or contracted for, before January 1, 1980, or which were converted to such use, or with respect to which conversion to such use was begun or contracted for, before January 1, 1980, so long as such conversion was completed before January 1, 1983 (in the case of conversions); or (2)" for "except those constructed after July 11, 1968, or those converted to either of such services after five years from July 11, 1968, and", and struck out ", are exempt from the requirements of this subchapter" following "after January 1, 1983".

1977—Subsec. (b). Pub. L. 95-61 substituted "January 1, 1983" for "July 11, 1978".

CHAPTER 3—CLEARANCE AND ENTRY

§ 91. Granting clearances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 86h, 391a, 817d, 817e of this title; title 18 section 965; title 33 sections 1232, 1321, 1517; title 50 App. section 13.

CHAPTER 7—CARRIAGE OF EXPLOSIVES OR DANGEROUS SUBSTANCES

§ 170. Regulation of carriage of explosives or other dangerous articles on vessels

REFERENCES IN TEXT

Section 835 of title 18, referred to in subsec. (e), was repealed by Pub. L. 96-129, title II, § 216(b), Nov. 30, 1979, 93 Stat. 1015. See section 2001 et seq. of Title 49, Transportation.

CHAPTER 8—LIMITATION OF VESSEL OWNER'S LIABILITY

§ 183. Amount of liability

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 185, 187, 188, 196, 1308 of this title; title 43 section 1814.

CHAPTER 10—REGULATION OF PILOTS AND PILOTAGE

§ 214. Federal licenses for pilots of steam vessels

(a) Establishment of eligibility requirements by Secretary

The Secretary of the department in which the Coast Guard is operating shall, in accordance with subsection (b) of this section, establish eligibility requirements for the issuance of a Federal license to pilot any steam vessel.

(b) Qualifications

No person may be issued a Federal license to pilot any steam vessel unless he—

(1) is at least twenty-one years of age;

(2) is of sound health and has no physical limitations which would hinder or prevent the performance of a pilot's duties;

(3) agrees to have a thorough physical examination each year while holding such license;

(4) demonstrates, to the satisfaction of the Secretary, that he possesses the requisite general knowledge and skill to hold such license;

(5) demonstrates proficiency in the use of electronic aids to navigation;

(6) maintains adequate knowledge of the waters to be navigated and knowledge of regulations for the prevention of collisions in such waters;

(7) has sufficient experience, as determined by the Secretary, to evidence his ability to handle any vessel of the type and size which he may be authorized to pilot; and

(8) meets any other requirement which the Secretary considers reasonable and necessary.

(c) Term; reapplication

No Federal license to pilot a steam vessel shall be valid for a term longer than five years. Upon expiration of any such license, the holder may reapply for an additional term and may be reissued a license if he meets the requirements specified under subsection (b) of this section.

(As amended Pub. L. 95-474, § 4, Oct. 17, 1978, 92 Stat. 1479.)

AMENDMENTS

1978—Pub. L. 95-474 substituted provision authorizing the Secretary of the department in which the Coast Guard in operating to establish eligibility requirements for issuance of Federal licenses for pilots of steam vessels, providing qualification standards for applicants, and permitting reapplication for a license for provision authorizing the Coast Guard to examine applicants and if found acceptable to issue licenses and to suspend or revoke licenses if pilots are found negligent, unskillful, inattentive to duties, or in wilful violation of title 52 of the Revised Statutes.

CHAPTER 10A—REGULATION OF GREAT LAKES PILOTS AND PILOTAGE

§ 216. Definitions

As used in this chapter:

[*See main edition for text of* (a)]

(b) "Secretary" means the Secretary of Transportation.

(c) "United States registered pilot" means a person, other than a member of the regular complement of a vessel, who holds a license authorizing navigation on the Great Lakes and suitably endorsed for pilotage on routes specified therein, issued under the authority of the provisions of title 52 of the Revised Statutes, and who is registered by the Secretary under the provisions of section 216b of this title.

(d) "Canadian registered pilot" means a person, other than a member of the regular complement of a vessel, who holds an appropriate license authorizing navigation on the Great Lakes and pilotage on routes specified therein, issued by the appropriate agency of Canada, and is registered by a designated agency of Canada on substantially the same basis as registration by the Secretary under the provisions of section 216b of this title.

(e) "Other officer" means the master or any other member of the regular complement of the vessel concerned who is qualified for the navigation of the Great Lakes waters described in section 216a(b) of this title and who is either licensed by the Secretary or certificated by an appropriate agency of Canada.

[*See main edition for text of* (f)]

(As amended Pub. L. 95-455, § 1(1)-(4), Oct. 13, 1978, 92 Stat. 1228.)

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in subsec. (c), consists of R.S. §§ 4399 to 4500, which are classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of this title. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-455, § 1(1), substituted "Secretary of Transportation" for "Secretary of Commerce" necessitating no change in text since change had previously been editorially made pursuant to Pub. L. 89-670. See Transfer of Functions note set out under this section in the main edition.

Subsec. (c). Pub. L. 95-455, § 1(2), deleted requirement that license held by a United States registered pilot be an unlimited master's license and substituted requirement that the license be issued under the authority of the provisions of title 52 of the Revised Statutes for requirement that the license be issued by the head of the Department in which the Coast Guard is operating under regulations issued by him.

Subsec. (d). Pub. L. 95-455, § 1(3), substituted requirement that license held by a Canadian registered pilot be an appropriate license authorizing navigation on the Great Lakes for requirement that such a license be a master's certificate or the equivalent.

Subsec. (e). Pub. L. 95-455, § 1(4), substituted provision authorizing licensing of other officers by the Secretary of Transportation for provision authorizing such licensing by the head of the Department in which the Coast Guard is operating under regulations issued by him.

§ 216b. Registration of United States pilots

(a) Qualifications, terms, and conditions

The registration of United States pilots shall be carried out by the Secretary under such regulations as to qualifications, terms, and conditions which will assure adequate and efficient pilotage service, provide for equitable participation of United States registered pilots with Canadian registered pilots in the pilotage of vessels to which this chapter applies, and provide fair and reasonable opportunity for registration. Each applicant must, as a prerequisite, be the holder of a license, as a master, mate, or pilot, issued under the authority of the provisions of title 52 of the Revised Statutes, and have acquired at least twenty-four months licensed service or comparable experience on vessels or integrated tugs and tows, of four thousand gross tons or over, operating on the Great Lakes 'or oceans. Those applicants qualifying with ocean service must have obtained at least six months of licensed service or comparable experience on the Great Lakes. The Secretary may require such experience and training, in addition to the minimum required by this subsection, as he considers necessary. In addition, each applicant shall agree that, if appointed as a United States registered pilot, he will be available for service when required and shall comply with this chapter and all applicable regulations issued by the Secretary pursuant to this chapter.

[*See main edition for text of* (b) *to* (e)]

(As amended Pub. L. 95-455, § 1(5), Oct. 13, 1978, 92 Stat. 1228.)

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in subsec. (a), consists of R.S. §§ 4399 to 4500, which are

classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of this title. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-455 substituted requirement that each applicant for registration be the holder of a license as a master, mate, or pilot issued under the authority of title 52 of the Revised Statutes for requirement that each applicant be the holder of an appropriate master's license and added minimum experience requirement.

§ 216e. Violations

'(a) Owners, masters, or persons in charge of vessels; offenses

Any owner, master, or person in charge of a vessel subject to this chapter who permits the navigation of the vessel by a person not a registered pilot in the waters designated by the President pursuant to section 216a(a) of this title or who permits the navigation of the vessel without having on board a registered pilot or other officer in the waters described in section 216a(b) of this title shall be liable to the United States in a civil penalty not exceeding $500 for each violation. Each day the vessel shall be so navigated shall constitute a separate violation.

(b) Persons not registered pilots; offenses

Any person, not a registered pilot, who directs the navigation of a vessel subject to this chapter in the waters designated by the President pursuant to section 216a(a) of this title, shall be subject to a civil penalty in an amount not exceeding $500 for each violation. Each day such person so directs the navigation of such vessel shall constitute a separate violation.

(c) Regulations

A person who violates any regulation issued pursuant to sections 216b and 216c of this title shall be liable to the United States in a civil penalty not exceeding $500 for each violation.

(d) Determination of amount of civil penalty; compromise; collection

Any person who is found by the Secretary, after notice and an opportunity for a hearing, to have violated any part of this chapter or a regulation issued hereunder shall be liable to the United States for the penalties as enumerated in this chapter. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

(e) Liability in rem; enforcement

Any vessel subject to the provisions of this chapter, which is used in violation of this chapter or any regulation issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to this chapter and may be proceeded against in the United States district court for any district in which such vessel may be found.

(As amended Pub. L. 95-455, § 1(6)-(11), Oct. 13, 1978, 92 Stat. 1228, 1229.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-455, § 1(6), (7), deleted enforcement provisions authorizing the seizure of vessels and proceeding against them by way of libel in any district court of the United States having jurisdiction for satisfaction of civil penalties imposed and calling for enforcement of such civil penalties by the head of the Department in which the Coast Guard is operating.

Subsec. (b). Pub. L. 95-455, § 1(8), deleted provision calling for enforcement of civil penalties by the head of the Department in which the Coast Guard is operating.

Subsec. (c). Pub. L. 95-455, § 1(9), deleted provision calling for enforcement of civil penalties by the Secretary and authorizing him to remit or mitigate any such penalties upon such terms as deemed appropriate.

Subsec. (d). Pub. L. 95-455, § 1(10), added subsec. (d).

Subsec. (e). Pub. L. 95-455, § 1(11), added subsec. (e).

§ 216f. Operation without registered pilots

Notwithstanding any other provision of this chapter, a vessel may be navigated in the United States waters of the Great Lakes without a United States or Canadian registered pilot when—

(a) the Secretary, or his designee, notifies the master that a United States or Canadian registered pilot is not available, or

(b) the vessel or its cargo is in distress or jeopardy.

(As amended Pub. L. 95-455, § 1(12), Oct. 13, 1978, 92 Stat. 1229.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-455 deleted provision relating to concurrence of the head of the Department in which the Coast Guard is operating or his designee.

CHAPTER 12—REGULATION OF VESSELS IN DOMESTIC COMMERCE

§ 251. Vessels employed in coasting trade or fisheries

(a) Vessels entitled to privileges; landing of catch of fish by foreign-flag vessels; fisheries defined

Vessels of twenty tons and upward, enrolled in pursuance of title 50 of the Revised Statutes, and having a license in force, or vessels of less than twenty tons, which, although not enrolled, have a license in force, as required by such title 50, and no others, shall be deemed vessels of the United States entitled to the privileges of vessels employed in the coasting trade or fisheries. Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or other-

wise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. For the purposes of this subsection, the term "fisheries" shall include the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation at any place within the fishery conservation zone established by section 1811 of title 16.

[*See main edition for text of* (b) *and* (c)]

(As amended Aug. 15, 1979, Pub. L. 96-61, § 2, 93 Stat. 407.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-61 added provision defining the term "fisheries".

§§ 329, 330. Repealed. Pub. L. 95-410, title II, § 214(a), Oct. 3, 1978, 92 Stat. 904

Section 329, R.S. § 4381; June 19, 1886, ch. 421, § 1, 24 Stat. 79; Aug. 24, 1912, ch. 355, § 1, 37 Stat. 434, provided for fees for prescribed services from owners and masters of vessels in domestic commerce, except vessels navigating frontier waters. See section 58a of Title 19, Custom Duties.

Section 330, R.S. § 4382; July 5, 1884, ch. 228, §§ 2, 3, 23 Stat. 132, 133; June 19, 1886, ch. 421, § 1, 24 Stat. 79; Mar. 3, 1897, ch. 389, § 9, 29 Stat. 689, provided for fees for prescribed services from owners and masters of vessels in domestic commerce navigating frontier waters. See section 58a of Title 19, Customs Duties.

§ 331. Certain fees abolished

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 391a of this title.

§ 333. Repealed. Pub. L. 95-410, title II, § 214(a), Oct. 3, 1978, 92 Stat. 904

Section, R.S. § 4383; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740; Aug. 8, 1953, ch. 397, § 2(d), 67 Stat. 508, imposed upon collector and Treasury designated officer or employee the duty of posting in his office a table of fees for prescribed services. See section 58a of Title 19, Customs Duties.

CHAPTER 14—INSPECTION OF STEAM VESSELS

SUBCHAPTER I—VESSELS SUBJECT TO INSPECTION AND REGULATION

§ 367. Seagoing vessels propelled by internal-combustion engines; exemptions

Existing laws covering the inspections of steam vessels are made applicable to seagoing vessels of three hundred gross tons and over propelled in whole or in part by internal-combustion engines to such extent and upon such conditions as may be required by the regulations of the Commandant of the Coast Guard: *Provided*, That this section shall not apply to any vessel engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industry. As used herein, the phrase "any vessel" engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industries includes cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska which are engaged exclusively in (1) the carriage of cargo to or from vessels in the fishery or a facility used or to be used in the processing or assembling of fishery products, or (2) the transportation of cannery or fishing personnel to or from operating locations, and vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska. The exemptions in the preceding sentence for cannery tender, and fishing tender vessels and vessels used in processing or assembling fishery products shall continue in force until January 1, 1983: *Provided further*, That as to licenses required for masters and engineers operating vessels propelled by internal-combustion engines operating exclusively in the district covering the Hawaiian Islands, said masters and engineers shall be under the jurisdiction of the Coast Guard officials having jurisdiction over said waters, who shall make diligent inquiry as to the character, merits, and qualifications, and knowledge and skill of any master or engineer applying for a license. If the said Coast Guard officials shall be satisfied from personal examination of the applicant and from other proof submitted that the applicant possesses the requisite character, merits, qualifications, knowledge, and skill, and is trustworthy and faithful, they shall grant him a license for the term of five years to operate such vessel under the limits prescribed in the license. The term "seagoing vessels" as used in this section shall be construed to mean vessels which in the usual course of their employment proceed outside the line dividing the inland waters from the high seas as designated and determined under the provisions of section 151 of title 33.

(As amended July 1, 1977, Pub. L. 95-61, § 7(b), 91 Stat. 260.)

AMENDMENTS

1977—Pub. L. 95-61 extended the termination date for the exemptions covering cannery tender and fishing tender vessels and vessels used in processing or assembling fishery products from July 11, 1978, to Jan. 1, 1983.

SUBCHAPTER V—MODE, MANNER, AND EXTENT OF INSPECTION; CERTIFICATES; RECORDS

§ 391a. Vessels carrying certain cargoes in bulk

(1) Statement of policy

The Congress hereby finds and declares—

(A) that the carriage by vessels of certain cargoes in bulk or in residue creates substantial hazards to life, property, the navigable waters of the United States (including the quality thereof) and the resources contained therein and to the adjoining land, including but not limited to fish, shellfish, and wildlife, marine and coastal ecosystems, and recreational and scenic values;

(B) that existing standards for the design, construction, alteration, repair, maintenance,

operation, equipping, personnel qualification, and manning of all such vessels which use any port or place subject to the jurisdiction of the United States or which operate in the navigable waters of the United States must be more stringent and comprehensive for the mitigation of the hazards to life, property, and the marine environment;

(C) that existing international standards for inspection and enforcement are incomplete, that those international standards that are in existence are often left unenforced by some flag states, and that there is a need to prevent substandard vessels from using any port or place subject to the jurisdiction of the United States or from operating in the navigable waters of the United States, for the mitigation of the hazards to life, property, or the marine environment;

(D) that standards developed through regulations shall incorporate the best available technology and shall be required unless clearly shown to create an undue economic impact which is not outweighed by the benefits to navigation and vessel safety or protection of the marine environment;

(E) that standards developed through regulations shall not impede or interfere with the right of innocent passage or any legitimate use of the high seas in accordance with recognized principles of international law; and

(F) that the United States should continue to actively support and encourage efforts to obtain international agreements concerning navigation and vessel safety and protection of the marine environment.

(2) Definitions

As used in this section, unless the context otherwise requires—

(A) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

(B) "Foreign vessel" means any vessel of foreign registry or operated under the authority of any nation other than the United States.

(C) "Hazardous material" means any liquid material or substance which is—

(i) flammable or combustible; or

(ii) designated a hazardous substance under section 1321(b) of title 33; or

(iii) designated a hazardous material under section 1803 of title 49.

(D) "Marine environment" means the navigable waters of the United States and the land and resources therein and thereunder; the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority; the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof and the waters superjacent thereto; and the recreational, economic, and scenic values of such waters and resources.

(E) "Oil" includes oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(F) "Person" means any individual (whether or not a citizen or national of the United States), or any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(G) "Public vessel" means a vessel which—

(i) is owned, or chartered by demise, and operated by the United States or any foreign government; and

(ii) is not engaged in commercial service.

(H) "Commercial service" means all types of trade or business involving the transportation of goods or persons, excluding the service performed by combatant vessels.

(I) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(J) "State" includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgins[1] Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

(K) "United States", when used in a geographical context, means all the States thereof.

(L) "Vessel of the United States" means any vessel documented or numbered under the laws of the United States.

(M) "Tanker" means a vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

(N) "Crude oil tanker" means a tanker engaged in the trade of carrying crude oil.

(O) "Product carrier" means a tanker engaged in the trade of carrying oil, other than crude oil.

(P) "Major conversion" means a conversion of an existing vessel which substantially alters the dimensions or carrying capacity of the vessel; or changes the type of vessel; or substantially prolongs its life; or which otherwise so alters the vessel that it is essentially a new vessel, as determined by the Secretary.

(Q) "New" means, with respect to various types of vessels subject to subsection (7) of this section, a vessel—

(i) for which the building contract is placed after June 1, 1979; or

(ii) in the absence of a building contract, the keel of which is laid, or which is at a similar stage of construction after January 1, 1980; or

(iii) the delivery of which is after June 1, 1982; or

(iv) which has undergone a major conversion, which is contracted for after June 1, 1979, or construction work of which is begun after January 1, 1980, or completed after June 1, 1982.

(R) "Existing" means, with respect to various types of vessels subject to subsection (7) of this section, a vessel which is not a new vessel.

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[1] So in original. Probably should be "Virgin".

(S) "Crude oil" means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportaion [1] and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

(3) Applicability

Except as provided in subsections (4) and (5) of this section, this section shall apply to any vessel—

(A) regardless of tonnage, size, or manner of propulsion;

(B) whether self-propelled or not;

(C) whether carrying freight or passengers for hire or not;

(D) which is a vessel of the United States, or which operates on or enters the navigable waters of the United States, or which transfers oil or hazardous materials in any port or place subject to the jurisdiction of the United States; and

(E) which carries oil or any hazardous materials in bulk as cargo or in residue.

Any such vessel shall be deemed to be a steam vessel for the purposes of title 52 of the Revised Statutes of the United States and shall be subject to the provisions thereof.

(4) Exceptions

This section shall not apply to—

(A) any public vessel; or

(B) any vessel of not more than 500 gross tons, documented in the service of oil exploitation, which is not a tanker and which would be subject to this section only because of the transfer of fuel from fuel supply tanks of such vessels to offshore drilling or production facilities, if the crew member in charge of such transfer is certified as a tankerman: *Provided*, That if the crew member in charge of the transfer of fuel holds a valid license as a master, mate, pilot, engineer or operator, it shall not be necessary for the crew member also to be certificated as a tankerman or have a tankerman endorsement on his license; or

(C) cannery tenders, fishing tenders, and fishing vessels of not more than 500 gross tons, used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska, when engaged exclusively in the fishing industry; or

(D) any foreign vessel, not destined for, or departing from, a port or place subject to the jurisdiction of the United States, that is in innocent passage through the territorial sea of the United States or in transit through the navigable waters of the United States which form a part of an international strait.

(5) Fish processing vessels

This section shall not apply to vessels of not more than 5,000 gross tons used in the processing and assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska, and such vessels shall be allowed to have on board flammable or combustible liquid cargo in bulk to the extent authorized, and upon such conditions as may be required, by regulations issued by the Secretary.

(6) Regulatory authority

(A) In accordance with the provisions of section 553 of title 5, the Secretary shall issue, and may from time to time amend or repeal, regulations for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, or manning of vessels to which this section applies, as may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment. The Secretary may issue differing regulations applicable to vessels engaged in the domestic trade, and may also issue regulations that exceed standards agreed upon internationally. The regulations issued by the Secretary under this subsection shall be in addition to any other regulations, issued under other provisions of law, that may apply to such vessels. The regulations issued by the Secretary under this subsection shall include, but need not be limited to, requirements relating to—

(i) superstructures, hulls, cargo holds or tanks, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, and boilers;

(ii) the handling or stowage of cargo, the manner of such handling or stowage of cargo, and the machinery and appliances used in such handling or stowage;

(iii) equipment and appliances for lifesaving, fire protection, and prevention and mitigation of damage to the marine environment;

(iv) the manning of such vessels and the duties, qualifications, and training of the officers and crew thereof, in accordance with subsections (9), (10), and (11) of this section;

(v) improvements in vessel maneuvering and stopping ability and other features which reduce the possibility of collision, grounding, or other accidents;

(vi) the reduction of cargo loss in the event of a collision, grounding, or other accident; and

(vii) the reduction or elimination of discharges during ballasting, deballasting, tank cleaning, cargo handling, or other such activity.

(B) In issuing regulations under paragraph (A), the Secretary shall give due consideration to the kinds and grades of cargo permitted to be on board such vessel.

(C) The Secretary, in the exercise of this regulatory authority, shall establish procedures for consulting with, and receiving and considering the views of—

(i) interested Federal departments and agencies,

(ii) officials of State and local governments,

(iii) representatives of the maritime community,

(iv) representatives of port and harbor authorities or associations,

[1] So in original. Probably should be "transportation.".

(v) representatives of environmental groups, and

(vi) any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment.

(7) Minimum standards

In issuing regulations pursuant to subsection (6) of this section, the Secretary shall require that any self-propelled vessel shall, as a minimum—

(A) if a new crude oil tanker of 20,000 deadweight tons or above, be equipped with—

(i) segregated ballast tanks which are protectively located;

(ii) a crude oil washing system; and

(iii) a cargo tank protection system, consisting of a fixed deck froth system and a fixed inert gas system;

(B) if a new product carrier of 30,000 deadweight tons or above, be equipped with segregated ballast tanks which are protectively located;

(C) if a new product carrier of 20,000 deadweight tons or above, be equipped with a cargo tank protection system consisting of a fixed deck froth system and a fixed inert gas system or, if such a product carrier carries dedicated products which are incompatible with such a cargo tank protection system, an alternate protection system as authorized by the Secretary;

(D) if an existing crude oil tanker of 40,000 deadweight tons or above, not later than June 1, 1981, be equipped with—

(i) segregated ballast tanks; or

(ii) a crude oil washing system:

Provided, That compliance may be delayed for vessels operating with dedicated clean ballast tanks if of 70,000 deadweight tons or above until June 1, 1983, or until June 1, 1985, for all other such vessels;

(E) if an existing crude oil tanker of 20,000 deadweight tons or above but less than 40,000 deadweight tons, fifteen years or older, not later than January 1, 1986, or the date on which it reaches fifteen years of age, whichever is later, be equipped with segregated ballast tanks or a crude oil washing system;

(F) if an existing crude oil tanker of 20,000 deadweight tons or above, not later than June 1, 1983, be equipped with an inert gas system: *Provided,* That for a crude oil tanker of less than 40,000 deadweight tons not fitted with high capacity tank washing machines, the Secretary may grant an exemption, if the vessel's owner can clearly show that compliance would be unreasonable and impracticable due to the vessel's design characteristics: *Provided further,* That an existing crude oil tanker of 70,000 deadweight tons or above must be in compliance herewith not later than June 1, 1981;

(G) if an existing product carrier of 40,000 deadweight tons or above, not later than June 1, 1981, be equipped with segregated ballast tanks or, in lieu thereof, may operate with dedicated clean ballast tasks[1];

(H) if an existing product carrier of 20,000 deadweight tons or above but less than 40,000 deadweight tons, fifteen years or older, not later than January 1, 1986, or the date on which it reaches fifteen years of age, whichever is later, be equipped with segregated ballast tanks or may operate with dedicated clean ballast tanks;

(I) if an existing product carrier of 40,000 deadweight tons or above, or an existing product carrier of 20,000 deadweight tons or above but less than 40,000 deadweight tons, which is fitted with high-capacity tank washing machines, not later than June 1, 1983, be equipped with an inert gas system: *Provided,* That an existing product carrier of 70,000 deadweight tons or above must be in compliance herewith not later than June 1, 1981,

(J) if of 10,000 gross tons or above, not later than June 1, 1979, be equipped with—

(i) a dual radar system, with short-range and with long-range capabilities and each with true-north features;

(ii) an electronic relative motion analyzer, which is at least functionally equivalent to such equipment complying with specifications established by the United States Maritime Administration;

(iii) an electronic position fixing device;

(iv) adequate communications equipment;

(v) a sonic depth finder;

(vi) a gyrocompass; and

(vii) up-to-date charts:

Provided, That the effective date of compliance with the requirement of clause (ii) shall be July 1, 1982 or such earlier date as agreed to internationally and accepted by the United States;

(K) if a new tanker of 10,000 gross tons or above, be equipped with—

(i) two remote steering gear control systems operable separately from the navigating bridge;

(ii) main steering gear control in the steering gear compartment;

(iii) means of communications and rudder angle indicators on the navigating bridge, remote steering gear control station, and the steering gear compartment;

(iv) two or more identical and adequate power units for the main steering gear;

(v) an alternative and adequate power supply, either from an emergency source of electrical power or from another independent source of power located in the steering gear compartment; and

(vi) means of automatic starting and stopping of power units with attendant alarms at all steering stations;

(L) if an existing tanker of 10,000 gross tons or above, not later than June 1, 1981, be equipped with—

(i) two remote steering gear control systems operable separately from the navigating bridge;

(ii) main steering gear control in the steering gear compartment; and

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[1] So in original. Probably should be "tanks".

(iii) means of communications and rudder angle indicators on the navigating bridge, remote steering gear control station, and the steering gear compartment; and

(M) if a crude oil tanker, which is engaged in the transfer of oil from an offshore oil exploitation or production facility on the Outer Continental Shelf of the United States, not later than June 1, 1980, be equipped with segregated ballast tanks, or may operate with dedicated clean ballast tanks or special ballast arrangements: *Provided*, That vessels subject to this paragraph shall comply fully with the other minimum standards of this section, where applicable; and

(N) in accordance with relevant international agreements to which the United States is a party, exempt vessels from the minimum requirements established in this subsection for segregated ballast, dedicated clean ballast, or crude oil washing if he determines that shore-based reception facilities are a preferred method of handling dirty ballast, and that adequate facilities are readily available.

After October 17, 1978, the installation of segregated ballast tanks, a crude oil washing system, or an inert gas system, required by regulations issued hereunder, on a vessel which is entitled to engage in coastwise trade in accordance with section 883 of this title shall be effected within the United States, its territories (not including trust territories), or its possessions, and vessels which fail to comply with this requirement shall thereafter not have the right to engage in the coastwise trade.

(8) Evidence of compliance

(A) No vessel of the United States to which this section applies shall have on board oil or hazardous materials in bulk as cargo or in residue until it has a Certificate of Inspection, issued under the provisions of title 52 of the Revised Statutes of the United States, and such certificate has been endorsed to indicate that the vessel is in compliance with the regulations issued under this section. If any such vessel is found not to be in compliance, the Secretary shall notify the owner or agent of the vessel and indicate how the vessel may be brought into compliance.

(B) No foreign vessel to which this section applies shall operate on or enter the navigable waters of the United States, or transfer oil or hazardous materials in any port or place under the jurisdiction of the United States, unless such vessel has been issued a Certificate of Compliance by the Secretary. The Secretary shall not issue such certificate until the vessel has been examined by the Secretary and found to be in compliance with the provisions of this section and the regulations issued hereunder. If such vessel is found not to be in compliance, the Secretary shall notify the owner or agent of the vessel and indicate how the vessel may be brought into compliance. The Secretary may allow provisional entry for the purposes of conducting examinations.

(C) The Secretary may accept, in whole or in part, a certificate, endorsement, or document issued by any foreign nation pursuant to any treaty, convention, or other international agreement to which the United States is a party, as a basis for issuance of a Certificate of Compliance.

(D) No vessel may carry any kind or grade of oil or hazardous materials in bulk as cargo or in residue unless its certificate is endorsed to allow such carriage. No such certificate may allow any vessel to carry any material prohibited by section 170(3) of this title.

(E) A certificate issued under this section shall be valid for a period not to exceed twenty-four months and may be renewed as specified by the Secretary. The Secretary may issue a temporary certificate under this section in appropriate circumstances; except that the temporary certificate shall be valid for not more than thirty days. Any certificate shall be revoked or suspended if the Secretary finds that the vessel involved no longer complies with the conditions upon which the certificate was issued.

(9) Personnel and manning standards for vessels of the United States

The Secretary shall prescribe standards for the manning of any vessel of the United States subject to the provisions of this section and the duties, qualifications, and training of the officers and crew thereof, including, but not limited to, standards relating to—

(A) instruction in vessel and cargo handling and vessel navigation under normal operating conditions in coastal and confined waters and on the high seas;

(B) instruction in vessel and cargo handling and vessel navigation in emergency situations and under accidental or potential accident conditions;

(C) license qualifications by specific type and size of vessels;

(D) qualification for licenses by use of simulators for the practice or demonstration of marine-oriented skills;

(E) minimum health and physical fitness criteria for various grades of licenses and certificates: *Provided*, That the Secretary shall waive the applicability of such criteria to any individual holding a license or certificate in effect on October 17, 1978, including subsequent renewals thereof: *Provided further*, That, when such a waiver is granted, the Secretary may prescribe conditions or limitations to the license or certificate, or the renewal thereof, as he may find reasonable and necessary for the safety of any vessel on which the individual may be employed;

(F) periodic retraining, and special training for upgrading positions, changing vessel type or size, or assuming new responsibilities; and

(G) determination of licenses and certificates, conditions of licensing or certification and period of licensing or certification by reference to experience, amount of training completed, and regular performance testing.

(10) Tankerman requirements

(A) Any vessel of the United States having on board oil or hazardous materials in bulk as cargo or in residue shall have a specified number of the crew certificated as tanker-

man, as may be required by the Secretary, and such requirement shall be so noted on the Certificate of Inspection issued to the vessel.

(B) Any foreign vessel having on board oil or hazardous materials in bulk as cargo or in residue shall have a special number of personnel certificated as tankerman, or equivalent, as may be required by the Secretary, when the vessel transfers oil or hazardous materials in any port or place subject to the jurisdiction of the United States; and such requirement shall be noted in applicable terminal operating procedures. No transfer operations may take place unless the crew member in charge is capable of clearly understanding instructions in English.

(C) The Secretary shall prescribe procedures, standards, and qualifications for the issuance of certificates or endorsements as tankerman, stating the kinds of oil or hazardous materials that can be handled with safety to the vessel and the marine environment.

(D) Certificates or endorsements as tankerman shall be subject to suspension and revocation on the same grounds and in the same manner as provided for under the provisions of section 239 of this title.

(11) Personnel and manning standards for foreign vessels

The Secretary shall issue regulations and procedures for the verification of manning, training, qualification, and watchkeeping standards promulgated by the certificating state of any foreign vessel which operates on or enters the navigable waters of the United States, and transfers oil or hazardous materials in any port or place under the jurisdiction of the United States. Such regulations and procedures shall include, but need not be limited to, provisions relating to—

(A) the receipt through the Inter-Governmental Maritime Consultative Organization or from the certificating state of the English text of laws, decrees, orders, regulations, specimen licenses and certificates, and other pertinent documents pertaining to manning, training, qualification, and watchkeeping of seafarers;

(B) the publication and distribution of, or otherwise making available to the public and appropriate enforcement personnel, copies of materials received as provided for in paragraph (A);

(C) the evaluation, at intervals of not less than five years, of each foreign state's system for licensing and certification of seafarers, including study course content and duration, examination requirements and prerequisites for licensing and certification, and related controls;

(D) determination, after the evaluation required by clause (C), of whether the foreign state, whose system for licensing and certification of seafarers was evaluated, has standards which are comparable to or more stringent than United States standards or international standards which are accepted by the United States;

(E) publication in the Federal Register of each determination made pursuant to clause (D), together with a brief explanation of the reasons therefor; and

(F) manning levels, based on vessel size and type of operation, when operating in the navigable waters of the United States, or in the safety zone in connection with utilization of deepwater ports.

(12) Modifications

The Secretary may modify any regulation or standard prescribed under this section to conform to the provisions of an international treaty, convention, agreement or an amendment thereto, which is ratified by the United States.

(13) Prohibited acts

(A) It is unlawful for any person—

(i) to violate any provision of this section or any regulation issued under this section; or

(ii) to refuse to permit any officer, authorized by the Secretary to enforce the provisions of this section, to board any vessel or to enter any shore area, place, or premises, under such person's control for purposes of inspection under this section; or

(iii) to refuse to obey any lawful directive issued under this section.

(B) It is unlawful for any vessel subject to the provision of this section—

(i) to operate in or on the navigable waters of the United States, or to use any port or place subject to the jurisdiction of the United States, while not in compliance with any provision of this section or any regulation issued hereunder; or

(ii) to fail to comply with any lawful directive issued pursuant to this section.

(14) Enforcement

(A) Civil penalty

(i) Any person who is found by the Secretary, after notice and an opportunity for a hearing, to have violated this section or a regulation issued hereunder shall be liable to the United States for a civil penalty, not to exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(ii) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(iii) If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General of the United States, for collection in any appropriate district court of the United States.

(B) Criminal penalty

(i) Any person who willfully and knowingly violates this section or any regulation issued hereunder shall be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both.

(ii) Any person who, in the willful and knowing violation of this section or any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in subparagraph (i), be fined not more than $100,000, or imprisoned for not more than ten years, or both.

(C) In rem liability

Any vessel subject to the provisions of this section, which is used in violation of this section or any regulation issued hereunder, shall be liable in rem for any civil penalty assessed pursuant to paragraph (A) and may be proceeded against in the United States district court for any district in which such vessel may be found.

(D) Injunction

The United States district courts shall have jurisdiction to restrain violations of this section or of regulations issued hereunder, for cause shown.

(E) Withholding clearance

The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 91 of this title, of any vessel, the owner or operator of which is subject to any of the penalties in this subsection. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

(15) Inspection

(A) National program

(i) The Secretary shall establish a national program for inspection of any vessel subject to this section. Each such vessel shall be inspected or examined at least once each year. Any such vessel over ten years of age shall undergo a special and detailed inspection of structural strength and hull integrity, as specified by the Secretary.

(ii) An inspection or examination may be conducted by any officer authorized by the Secretary. If any such officer is not reasonably available, the Secretary may contract for the conduct of inspections or examinations in the United States and in foreign countries. Under such contract, an inspector may be authorized to act on behalf of the Secretary, except that no such inspector may issue a Certificate of Inspection or Certificate of Compliance, but may issue a temporary certificate.

(iii) Notwithstanding the provisions of section 331 of this title, the Secretary shall prescribe by regulation reasonable fees for any inspection or examination conducted pursuant to this section outside the geographical limits of the United States, or which, when involving a foreign vessel, is conducted pursuant to the contract authority provided for in subparagraph (ii) of this paragraph. The owner or operator of any vessel inspected or examined by the Secretary or his designee shall be liable for such fees. Amounts received as fees shall be credited to the General Treasury.

(B) Vessel documents

Any vessel subject to the provisions of this section shall have on board such documents as the Secretary deems necessary for inspection or enforcement under this section, including, but not limited to, documents indicating—

(i) the kind, grade, and approximate quantities of any cargo on board;

(ii) the shipper and consignee of the cargo;

(iii) the points of origin and destination of the vessel; and

(iv) the name of an agent in the United States authorized to accept legal process.

(16) Marine safety information system

(A) In general

The Secretary shall establish a marine safety information system which shall contain information with regard to any vessel subject to this section which operates on or enters the navigable waters of the United States, or which transfers oil or any hazardous materials in any port or place under the jurisdiction of the United States. In acquiring such information, the Secretary shall make full use of publicly available information. The Secretary may, by regulation, require any such vessel to furnish such data or other information as he deems necessary, in order to carry out the purposes of this subsection, including, but not limited to—

(i) the names of any person with an ownership interest in such vessel;

(ii) details of compliance with the financial responsibility requirements of applicable statutes or regulations;

(iii) registration information, including all changes in the name of the vessel;

(iv) the history of accidents or serious repair problems of the vessel; and

(v) a record of all inspections or examinations of a vessel conducted under subsection (15) of this section.

(B) Interagency cooperation

The head of each department or agency of the Federal Government shall, upon a written request from the Secretary, furnish any available information which the Secretary deems necessary to confirm the information received pursuant to paragraph (A).

(17) Lightering

(A) In general

After the effective date of regulations issued by the Secretary pursuant to paragraph (B), no vessel may transfer oil or hazardous materials in a port or place subject to the jurisdiction of the United States, if the cargo has been transferred from another vessel in the navigable waters of the United States or in the marine environment unless—

(i) the transfer was conducted in accordance with regulations issued by the Secretary, and

(ii) both the delivering and receiving vessels had, on board at the time of transfer, a Certificate of Inspection or a Certificate of Compliance, as would have been required under subsection (8) of this section, had the transfer taken place in a port or place subject to the jurisdiction of the United States.

(B) Regulations

The Secretary shall issue, and may from time to time, amend or repeal regulations for the transferring of oil or hazardous materials in the navigable waters of the United States or in the marine environment when such oil or hazardous material is destined for a port or place subject to the jurisdiction of the United States. Such regulations shall include, but need not be limited to—

(i) minimum safe operating conditions, including sea state, wave height, weather, proximity to channels or shipping lanes, and other similar factors;

(ii) prevention of spills;

(iii) equipment for responding to any spill;

(iv) prevention of any unreasonable interference with navigation or other reasonable uses of the high seas, as such uses are defined by treaty, convention, or customary international law;

(v) establishment of lightering zones; and

(vi) requirements for communication and prearrival messages.

(18) Tank washings

(A) No vessel may transfer a cargo in a port or place subject to the jurisdiction of the United States, if the vessel has arrived after having discharged tank washings containing oil or hazardous materials in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party, in preparation for loading that cargo in any port or place subject to the jurisdiction of the United States.

(B) The Secretary shall establish effective control and supervisory measures to implement the provisions of this subsection.

(19) Report

Within six months after the end of each calendar year, the Secretary shall submit to the Congress—

(A) a report on the administration of this section during the preceding calendar year;

(B) a summary of inspection and enforcement activities during the preceding calendar year; and

(C) recommendations to the Congress for any additional legislative authority necessary to improve navigation and vessel safety and protection of the marine environment.

(As amended Oct. 17, 1978, Pub. L. 95–474, § 5, 92 Stat. 1480.)

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in subsecs. (3) and (8)(A), consists of R.S. §§ 4399 to 4500, which are classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of this title. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables.

This Act, referred to in subsec. (14)(B)(ii), probably means R.S. § 4417a, which enacted this section.

AMENDMENTS

1978—Subsec. (1). Pub. L. 95–474 substituted provisions declaring that existing standards for design, construction, etc., of vessels carrying certain cargoes in bulk must be more stringent and comprehensive for the mitigation of hazards to life, property, and the marine environment, that international standards for inspection and enforcement are incomplete or unenforced, that standards developed must incorporate the best available technology, that standards not impede innocent passage or use of the high seas, and that the United States actively support efforts to obtain international agreements concerning navigation and vessel safety and protection of the marine environment for provisions declaring that existing standards for design, construction, etc., of vessels carrying certain cargoes in bulk be improved and that minimum standards for design, construction, etc., be established.

Subsec. (2). Pub. L. 95–474 substituted provision defining terms as used in this section for provision relating to the vessels included within this section.

Subsec. (3). Pub. L. 95–474 substituted provision relating to the vessels to which this section applies for provision authorizing the issuance of rules and regulations for design, construction, etc., of vessels included within this section.

Subsec. (4). Pub. L. 95–474 substituted provision exempting certain vessels from this section for provision relating to adoption of rules and regulations.

Subsec. (5). Pub. L. 95–474 substituted provision relating to fish processing vessels for provision relating to issuance and endorsement of certificates of inspection.

Subsec. (6). Pub. L. 95–474 substituted provision authorizing the Secretary to issue rules and regulations for design, construction, etc., of vessels included within this section for provision requiring vessels included within this section to have a certificate of compliance or endorsement on the certificate of inspection stating that such vessel complies with the rules and regulations for protection of the marine environment.

Subsec. (7). Pub. L. 95–474 substituted provision relating to the minimum standards of regulations for provision relating to the publication and effective date of regulations for the protection of the marine environment.

Subsec. (8). Pub. L. 95–474 substituted provision relating to documents evidencing compliance with the regulations of this section for provision relating to shipping documents.

Subsec. (9). Pub. L. 95–474 substituted provision relating to personnel and manning standards for vessels of the United States for provision relating to certification of tankermen.

Subsec. (10). Pub. L. 95–474 substituted provision relating to the tankerman requirements for provision relating to the effective date of rules and regulations issued pursuant to this section.

Subsec. (11). Pub. L. 95–474 substituted provision relating to personnel and manning standards for foreign vessels for provision relating to penalties.

Subsec. (12). Pub. L. 95–474 substituted provision authorizing modifications in regulations to conform to international treaties for provision relating to injunctive proceedings.

Subsec. (13). Pub. L. 95–474 substituted provision relating to prohibited acts for provision relating to denial of entry for failure to comply with this section or the regulations issued pursuant to this section.

Subsecs. (14) to (19). Pub. L. 95–474 added subsecs. (14) to (19).

SAVINGS PROVISIONS

Section 6(b) of Pub. L. 95-474 provided that: "Regulations previously issued under statutory provisions which are amended by section 5 of this Act [amending this section] shall continue in effect as though issued under the authority of section 4417a of the Revised Statutes of the United States, as amended by this Act [this section], until expressly abrogated, modified, or amended by the Secretary. Any proceeding under the provisions of section 4417a of the Revised Statutes of the United States, as it existed prior to amendment by this Act [amendment by section 5 of Pub. L. 95-474], for a violation which occurred before the effective date of this Act [Oct. 17, 1978], may be initiated or continued to conclusion as though such section had not been amended by this Act."

Section 202 of Pub. L. 92-340, which provided that regulations issued prior to amendment of this section by section 201 of Pub. L. 92-340 continue in effect until abrogated, modified, or amended by the Secretary and that any proceedings initiated under this section prior to July 10, 1972, the effective date of Pub. L. 92-340, continue as though this section had not been amended by Pub. L. 92-340, was omitted in the general revision of Pub. L. 92-340 by section 2 of Pub. L. 95-474, Oct. 17, 1978, 92 Stat. 1471. See section 6(b) of Pub. L. 95-474 set out as a note above.

REPORT TO CONGRESS

Section 203 of Pub. L. 92-340, which provided that the Secretary, for a period of 10 years following July 10, 1972, make a report to Congress at the start of each session regarding his activities under this section, was omitted in the general revision of Pub. L. 92-340 by section 2 of Pub. L. 95-474. See subsec. (19) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 170b, 420, 467, 526r of this title; title 33 sections 1225, 1228; title 49 sections 1806, 10542.

§ 395. Seagoing barges; hulls and equipment

[*See main edition for text of* (a) *and* (b)]

(c) Vessels exempted from biennial inspection

During the period beginning January 1, 1977, and ending January 1, 1982, the provisions of subsection (b) of this section shall not apply to vessels of not more than 5,000 gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska.

(d) Certificate of inspection

Upon the satisfactory completion of the inspection authorized herein, a certificate of inspection shall be issued in the manner and for the purposes prescribed in sections 399 and 400 of this title.

(As amended June 30, 1978, Pub. L. 95-308, § 7, 92 Stat. 359.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-308 added subsec. (c). Former subsec. (c) was redesignated as (d).

Subsec. (d). Pub. L. 95-308 redesignated former subsec. (c) as (d).

§ 404. Inspection of ferryboats, canal boats, and small craft; regulations; exemptions

The hulls and boilers of every ferryboat, canal boat, yacht or other small craft of like character propelled by steam, shall be inspected under the provisions of this title. Such other provisions of law for the better security of life as may be applicable to such vessels shall, by the regulations of the Secretary of the department in which the Coast Guard is operating, also be required to be complied with before a certificate of inspection shall be granted, and no such vessel shall be navigated without a licensed engineer and a licensed pilot: *Provided,* That in open steam launches of ten gross tons and under, one person, if duly qualified, may serve in the double capacity of pilot and engineer. All vessels of above fifteen gross tons carrying freight for hire and all vessels of above fifteen gross tons and in excess of sixty-five feet in length carrying passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha, or electric motors, shall be subject to all the provisions of this section relating to the inspection of hulls and boilers and requiring engineers and pilots, and for any violation of the provisions of title 52 of the Revised Statutes applicable to such vessels, or of rules or regulations lawfully established thereunder, and to the extent to which such provisions of law and regulations are so applicable, the said vessels, their masters, officers, and owners shall be subject to the provisions of sections 494 to 498 of this title, relating to the imposition and enforcement of penalties and the enforcement of law: *Provided, however,* That until June 30, 1956, no vessel registered or licensed as a vessel of the United States of fifteen gross tons or less on December 31, 1953, shall be deemed to be subject to the inspection provisions of this section notwithstanding the fact that such vessel may thereafter be found to have a tonnage in excess of fifteen gross tons, unless such finding results from an alteration in the length, breadth, or depth effected after December 31, 1953: *Provided, further,* That no vessel under one hundred and fifty gross tons, owned by or demise chartered to any cooperative or association engaged solely in transporting cargo owned by any one or more of the members of such cooperative or association on a nonprofit basis (1) between places within the inland waters of southeastern Alaska, as defined pursuant to section 151 of title 33, or (2) between places within said inland waters of southeastern Alaska and Prince Rupert, British Columbia, or (3) between places within said inland waters of southeastern Alaska and places within the inland waters of the State of Washington, as also defined pursuant to such section, via sheltered waters, as defined in article I, of the Treaty between United States and Canada defining certain waters of the west coast of North America as sheltered waters, dated December 9, 1933, shall be deemed to be carrying freight for hire within the meaning of this section. As used herein, the phrase "engaged in fishing as a regular business" includes cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska which are engaged exclusively in (1) the carriage of cargo to or from vessels in the fishery or a facility used or to be used in the processing or assembling of fishery products, or (2) the

transportation of cannery or fishing personnel to or from operating locations, and vessels of not more than five thousand gross tons used in the processing or assembling of fishery products in the fisheries of the States of Oregon, Washington, and Alaska. The exemptions in the preceding sentence for cannery tender, fishing tender vessels and vessels used in processing or assembling of fishery products shall continue in force until January 1, 1983.

(As amended July 1, 1977, Pub. L. 95-61, § 7(a), 91 Stat. 260.)

AMENDMENTS

1977—Pub. L. 95-61 extended the termination date for the exemptions covering cannery tender and fishing tender vessels and vessels used in processing or assembling of fishery products from July 11, 1978, to Jan. 1, 1983.

CHAPTER 18—MERCHANT SEAMEN

SUBCHAPTER VI—DISCHARGE

§ 654. Proceedings on examination of vessel

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 660-1. Space and accommodations for crew; hospital compartments

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 20—SUITS IN ADMIRALTY BY OR AGAINST VESSELS OR CARGOES OF UNITED STATES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 740, 782, 1247, 1292 of this title; title 28 section 2680; title 41 section 603; title 50 App. section 1291.

CHAPTER 22—SUITS IN ADMIRALTY AGAINST UNITED STATES FOR DAMAGES CAUSED BY PUBLIC VESSELS OR FOR TOWAGE OR SALVAGE SERVICES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 740 of this title; title 41 section 603.

CHAPTER 23—SHIPPING ACT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 847, 1114, 1183, 1225, 1308, 1309 of this title; title 28 section 2342; title 49 section 10544.

REPEALS

Subtitle IV (§ 10101 et seq.) of Title 49, Transportation (containing the codification of part III of the Interstate Commerce Act, as added by Act Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929, which was formerly classified to sections 901 to 923 of Title 49), provides for the regulation of rates and services of water carriers by the Interstate Commerce Commission, thereby substantially superseding certain sections of this and the following chapters. In this connection former section 920(a) to (d) of Title 49 provided:

[*See main edition for text of (a) to (d)*]

§ 801. Definitions

When used in this chapter:

The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "controlled carrier" means a common carrier by water operating, offering, or proposing to offer service in the foreign commerce of the United States which carrier is or whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the controlled carrier operate. Ownership or control by such government shall be deemed to exist if a majority portion of the interest in the carrier is owned or controlled in any manner by such government, by any agency of the government, or by any person, corporation, or entity controlled by such government. Ownership or control shall also be deemed to exist if the government has the right to appoint or disapprove the appointment of a majority of the directors or the chief operating or executive officer of the carrier.

The term "other person subject to this chapter" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means "registered, enrolled, or licensed under the laws of the United States."

The term "carrying on the business of forwarding" means the dispatching of shipments by any person on behalf of others, by ocean-going common carriers in commerce from the

United States, its Territories, or possessions to foreign countries, or between the United States and its Territories or possessions, or between such Territories and possessions, and handling the formalities incident to such shipments.

An "independent ocean freight forwarder" is a person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest.

(As amended Oct. 18, 1978, Pub. L. 95-483, § 2, 92 Stat. 1607.)

AMENDMENTS

1978—Pub. L. 95-483 added the definition of "controlled carrier".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4 of Pub. L. 95-483 provided that: "The provisions of this Act, including the amendments made by this Act [amending sections 801 and 817 of this title and enacting a provision set out as a note under section 842 of this title], shall become effective thirty days after its date of enactment [Oct. 18, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 845b, 888 of this title; title 49 section 10703.

§ 802. Corporation, partnership, or association as citizen

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 883-1, 888, 891u, 922, 1244, 1271, 1411 of this title; title 15 sections 144, 2509; title 16 section 742c; title 42 section 5919; title 50 App. section 1736.

§ 804. Federal Maritime Commission; rules and regulations for filing of rates and charges for barging and affreighting of containers or containerized cargo by barges within the United States

CODIFICATION

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, part III of which was classified to chapter 12 (§ 901 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

§ 814. Contracts between carriers filed with Commission; definition of "agreement"; approval, disapproval, etc., by Commission; unlawful execution of agreements; conference agreements and antitrust laws exemptions; civil actions for penalties; terminal leases exemption

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 817, 819, 831 of this title.

§ 815. Discriminatory acts prohibited

It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

It shall be unlawful for any common carrier by water, or other person subject to this chapter, either alone or in conjunction with any other person, directly or indirectly—

[*See main edition for text of First to Third pars.*]

Whoever violates any provision of this section other than paragraphs First and Third hereof shall be subject to a civil penalty of not more than $25,000 for each such violation.

Whoever violates paragraphs First and Third hereof shall be guilty of a misdemeanor punishable by a fine of not more than $5,000 for each offense.

(As amended June 19, 1979, Pub. L. 96-25, § 2, 93 Stat. 71.)

AMENDMENTS

1979—Pub. L. 96-25 increased the civil penalty for violating any provision of this section other than paragraphs First and Third from not more than $5,000 for each violation to not more than $25,000 for each violation.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 11 of Pub. L. 96-25 provided that: "The provisions of this Act [amending sections 815, 817, 820, 821, 822, 826, 828, 829, and 831 of this title and enacting provisions set out as a note under section 842 of this title], including the amendments made by this Act, shall become effective immediately upon its date of enactment [June 19, 1979]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 821, 831 of this title.

§ 817. Carriers in interstate commerce to establish, observe, and enforce reasonable rates and regulations; carriers in foreign commerce to file tariffs of rates and charges; controlled carriers to establish and maintain reasonable rates and regulations

[*See main edition for text of (a)*]

(b) [*See main edition for text of (1) to (5)*]

(6) Whoever violates any provision of this section, other than subsection (b)(3) hereof involving rebates or refunds shall be subject to a civil penalty of not more than $5,000 for each day such violation continues.

(7) Whoever violates subsection (b)(3) hereof by means of rebates or refunds, shall be subject to a civil penalty of not more than $25,000 for each shipment on which a rebate or refund was paid and to suspension by the Commission of any or all tariffs filed by or on behalf of such carrier, or suspension of that carrier's right to utilize any or all tariffs of conferences of which that carrier may be a member, for a period not to exceed twelve months. Any carrier whose tariffs or rights of use thereof have been suspended pursuant to this paragraph and who accepts cargo for carriage during the suspension period which cargo otherwise would have been

governed by the provisions of the suspended tariff(s) shall be subject to a civil penalty of not more that $50,000 for each shipment so accepted.

For purposes of this subsection and section 821(c) of this title, a shipment shall mean all of that cargo, the carriage of which is evidenced by a single bill of lading.

(c)(1) No controlled carrier subject to this chapter shall maintain rates or charges in its tariffs filed with the Commission that are below a level which is just and reasonable, nor shall any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations in such tariffs. An unjust or unreasonable classification, rule, or regulation means one which results or is likely to result in the carriage or handling of cargo at rates or charges which are below a level which is just and reasonable. The Commission may at any time after notice and hearing, disapprove any rates, charges, classifications, rules, or regulations which the controlled carrier has failed to demonstrate to be just and reasonable. In any proceeding under this subsection, the burden of proof shall be on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations filed by a controlled carrier which have been rejected, suspended, or disapproved by the Commission are void, and their use is unlawful.

(2) For the purpose of this subsection, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the Commission may take into account appropriate factors, including, but not limited to, whether: (i) the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs, which are hereby defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade; (ii) the rates, charges, classifications, rules, or regulations are the same as or similar to those filed or assessed by other carriers in the same trade; (iii) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or (iv) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

(3) Notwithstanding the provisions of subsection (b)(2) of this section, rates, charges, classifications, rules, or regulations of controlled carriers shall not, without special permission of the Commission, become effective within less than thirty days following the date of filing with the Commission. Following the effective date of this subsection, each controlled carrier shall, upon the request of the Commission, file within twenty days of request, with respect to its existing or proposed rates, charges, classifications, rules, or regulations a statement of justification which sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations, upon which the Commission may reasonably base its determination of the lawfulness thereof.

(4) Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations filed by a controlled carrier may be unjust and unreasonable, the Commission may issue an order to the controlled carrier to show cause why such rates, charges, classifications, rules, or regulations should not be disapproved. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend such rates, charges, classifications, rules, or regulations at any time prior to their effective date. In the case of any rates, charges, classifications, rules, or regulations which have already become effective, the Commission may, upon the issuance of an order to show cause, suspend such rates, charges, classifications, rules, or regulations on not less than sixty days notice to the controlled carrier. No period of suspension hereunder may be greater than one hundred and eighty days. Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations under this provision, the affected carrier may file new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations: *Provided, however,* That the Commission may reject such new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.

(5) Concurrently with the publication thereof, the Commission shall transmit to the President any order of suspension or final order of disapproval of rates, charges, classifications, rules, or regulations of a controlled carrier subject to the provisions of this subsection. Within ten days after the receipt or the effective date of such Commission order, whichever is later, the President may request the Commission in writing to stay the effect of the Commission's order if he finds that such stay is required for reasons of national defense or foreign policy which reasons shall be specified in the report. Notwithstanding any other provision of law, the Commission shall immediately grant such request by the issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

(6) The provisions of this subsection shall not apply to: (i) any controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; (ii) any controlled carrier of a state which, on the effective date of this subsection, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development; (iii) rates, charges, classifications, rules, or regulations of any controlled carrier in any particular trade which are cov-

ered by an agreement approved under section 814 of this title, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection; (iv) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein, and the United States, or any of its districts, territories, or possessions; or (v) a trade served exclusively by controlled carriers.

(As amended Oct. 18, 1978, Pub. L. 95-483, § 3, 92 Stat. 1607; June 19, 1979, Pub. L. 96-25, § 3, 93 Stat. 71.)

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (c)(3), (6) of this section, is thirty days after Oct. 18, 1978. See section 4 of Pub. L. 95-483 set out as an Effective Date note under section 801 of this title.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-25 substituted "any provision of this section, other than subsection (b)(3) hereof involving rebates or refunds shall be subject to a civil penalty of not more than $5,000" for "any provision of this section shall be subject to a civil penalty of not more than $1,000" in par. (6) and added par. (7) and provisions following par. (7).

1978—Subsec. (c). Pub. L. 95-483 added subsec. (c).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-483 effective thirty days after Oct. 18, 1978, see section 4 of Pub. L. 95-483, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 821, 831 of this title.

§ 820. Reports by carriers required

(a) The Federal Maritime Commission and the Secretary of Commerce may require any common carrier by water, or other person subject to this chapter, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it or him any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this chapter. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Commission or Secretary so requires, and shall be furnished in the form and within the time prescribed by the Commission or Secretary. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of $100 for each day of such default.

Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than $1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

(b) The Commission shall require the chief executive officer of every vessel operating common carrier by water in foreign commerce and to the extent it deems feasible, may require any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to this chapter, to file a periodic, written certification under oath with the Commission attesting to—

(1) a policy prohibiting the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of this chapter;

(2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof;

(3) the details of the efforts made, within the company or otherwise, to prevent or correct illegal rebating; and

(4) full cooperation with the Commission in its investigation of illegal rebating or refunds in United States foreign trades, and in its efforts to end such illegal practices.

The Commission may by regulation prescribe the form and content of any certification required under the authority of this subsection. Failure to file any such certification shall result in a civil penalty of not more than $5,000 for each day such violation continues.

(As amended June 19, 1979, Pub. L. 96-25, § 4, 93 Stat. 71.)

AMENDMENTS

1979—Pub. L. 96-25 designated existing two paragraphs as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

§ 821. Complaints to Commission and investigations

(a) Any person may file with the Federal Maritime Commission a sworn complaint setting forth any violation of this chapter by a common carrier by water, or other person subject to this chapter, and asking reparation for the injury, if any, caused thereby. The Commission shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the Commission, satisfy the complaint or answer it in writing. If the complaint is not satisfied the Commission shall, except as otherwise provided in this chapter, investigate it in such manner and by such means, and make such order as it deems proper. The Commission, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complaint for the injury caused by such violation.

(b) The Commission, upon its own motion, may in like manner and, with the same powers, investigate any violation of this chapter.

(c)(1) In addition to, and without limiting the authority granted to the Commission by subsec-

tions (a) and (b) hereof, the Commission may, on its own motion, institute an adjudicatory investigation into possible violations of section 815 of this title (other than paragraphs First and Third) involving rebates or refunds in foreign commerce or violations of section 817(b)(3) of this title involving rebates or refunds, with the powers set forth in subsection (c)(2) hereof in addition to those already contained in sections 826, 841a, and other sections of this chapter.

(2) Failure on the part of any common carrier, respondent to a proceeding instituted pursuant to subsection (c)(1) of this section, or any other person directly or indirectly controlling, controlled by, or under common control with such respondent carrier, to comply with any subpena or any duly issued order compelling an answer to interrogatories or to designated questions propounded by deposition or compelling production of documents in relation to any investigation conducted under subsection (c)(1) of this section, shall authorize the Commission to issue an order to show cause why any or all tariffs filed pursuant to section 817(b) of this title, by or on behalf of the respondent carrier, or any or all rights of the respondent carrier to utilize such tariffs in the case of conference tariffs, should not be suspended until that carrier or any person directly or indirectly controlling, controlled by, or under common control with such carrier, has fully responded to the pertinent deposition, interrogatory, production request or motion, or subpena, and after such proceeding, to so suspend those tariffs or the respondent carrier's rights to utilize such tariffs. Any carrier whose tariff(s) or rights of use thereof have been suspended pursuant to this subparagraph and who accepts cargo for carriage during the suspension period which cargo otherwise would have been governed by the provisions of the suspended tariff(s) shall be subject to a civil penalty of not more than $50,000 for each shipment so accepted.

(3) If, in defense of its failure to comply with a subpena or discovery order issued in relation to any investigation conducted under subsection (c)(1) of this section, a common carrier alleges documents or information are located in a foreign country and cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of such failure to comply and of the allegation relating to foreign laws. Upon receiving such notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

(4) Before any tariff suspension ordered pursuant to subsection (c)(2) of this section, or section 817(b)(7) of this title, becomes effective, it shall be immediately submitted to the President who may, within ten days after receiving it, disapprove any such order if he finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(As amended June 19, 1979, Pub. L. 96-25, § 5, 93 Stat. 72.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-25, § 5(a), designated first existing paragraph as subsec. (a).

Subsec. (b). Pub. L. 96-25, § 5(a), (b), designated the second existing paragraph as subsec. (b) and, in subsec. (b) as so designated, struck out "except as to orders for the payment of money," following "The Commission, upon its own motion, may in like manner and,".

Subsec. (c). Pub. L. 96-25, § 5(c), added subsec. (c).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 817, 826, 831, 845, 845a of this title.

§ 822. Orders of Commission made only after full hearing

Orders of the Commission relating to any violation of this chapter or to any violation of any rule or regulation issued pursuant to this chapter shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

All orders of the Federal Maritime Commission made under this chapter, as amended or supplemented, shall continue in force until its further order, or for a specified period of time, as shall be prescribed in the order, unless the same shall be suspended, or modified, or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(As amended June 19, 1979, Pub. L. 96-25, § 6, 93 Stat. 73.)

AMENDMENTS

1979—Pub. L. 96-25 struck out ", other than for the payment of money," following "All orders of the Commission".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

§ 826. Discovery; attendance of witnesses and production of books and papers

[*See main edition for text of* (a)]

(b) Obedience to this section shall, on application by the Commission, be enforced as are orders of the Commission.

(As amended June 19, 1979, Pub. L. 96-25, § 7, 93 Stat. 73.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-25 struck out "other than for the payment of money" following "enforced as are orders of the Commission".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 821 of this title.

§ 828. Enforcement of orders of Commission

In case of violation of any order of the Federal Maritime Commission, the Commission, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

(As amended June 19, 1979, Pub. L. 96-25, § 8, 93 Stat. 73.)

AMENDMENTS

1979—Pub. L. 96-25 struck out "other than an order for the payment of money," following "In case of violation of any order of the Federal Maritime Commission,".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

§ 829. Violation of orders of Commission for payment of money

In case of violation of any order of the Federal Maritime Commission for the payment of reparation the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the Commission in the premises.

[*See main edition for text of second and third pars.*]

No petition or suit for the enforcement of an order for the payment of reparation shall be maintained unless filed within one year from the date of the order.

(As amended June 19, 1979, Pub. L. 96-25, § 9, 93 Stat. 73.)

AMENDMENTS

1979—Pub. L. 96-25 substituted "for the payment of reparation" for "for the payment of money" in the initial paragraph and in the final paragraph.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

§ 831. Civil and criminal penalties

[*See main edition for text of (a) to (c)*]

(d) No penalty shall be imposed on any person for conspiracy after August 29, 1972: (1) to rebate or refund in violation of the initial paragraph or paragraph Second of section 815 of this title, or under section 817(b)(3) of this title; or (2) to defraud the Commission by concealment of such rebates or refunds in any manner.

(e) Notwithstanding any other provision of law, the Commission shall have authority to assess or compromise all civil penalties provided in this chapter: *Provided, however,* That, in order to assess such penalties a formal proceeding under section 821 of this title shall be commenced within five years from the date when the violation occurred.

(As amended June 19, 1979, Pub. L. 96-25, § 10, 93 Stat. 73.)

AMENDMENTS

1979—Subsecs. (d), (e). Pub. L. 96-25 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-25 effective June 19, 1979, see section 11 of Pub. L. 96-25, set out as an Effective Date of 1979 Amendment note under section 815 of this title.

§ 841a. Rules and regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 821 of this title.

§ 842. Short title

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96-25, § 1, June 19, 1979, 93 Stat. 71, provided: "That this Act [amending sections 815, 817, 820, 821, 822, 826, 828, 829, and 831 of this title and enacting provisions set out as a note under section 815 of this title] may be cited as the 'Shipping Act Amendments of 1979'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-483, § 1, Oct. 18, 1978, 92 Stat. 1607, provided: "That this Act [amending sections 801 and 817 of this title and enacting provision set out as a note under section 801 of this title] may be cited as the 'Ocean Shipping Act of 1978'."

CHAPTER 23A—INTERCOASTAL SHIPPING

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 833a, 1114, 1225 of this title; title 26 section 7701; title 28 section 2342; title 49 sections 10542, 10544, 10703; title 50 App. section 1216.

§ 843. Definitions

When used in this chapter—

(1) The term "common carrier by water in intercoastal commerce" for the purposes of this chapter shall include every common and contract carrier by water engaged in the transportation for hire of passengers or property between one State of the United States and any other State of the United States by way of the Panama Canal.

(2) The term "general increase in rates" means any change in rates, fares, or charges which will (A) result in an increase in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in an increase in

gross revenues of such carrier for the particular trade of not less than 3 per centum.

(3) The term "general decrease in rates" means any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(As amended Oct. 18, 1978, Pub. L. 95-475, § 1, 92 Stat. 1494.)

AMENDMENTS

1978—Pub. L. 95-475 designated existing provisions as par. (1) and added pars. (2) and (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 5 of Pub. L. 95-475 provided that: "This Act [amending sections 843 to 845a of this title] shall take effect ninety days after enactment [Oct. 18, 1978]."

§ 844. Schedule of rates; filing; posting; availability; incorporation by reference in short form documents; penalties for violations

[See main edition for text of first par.]

No change shall be made in the rates, fares, or charges, or classifications, rules, or regulations, which have been filed and posted as required by this section, except by the publication, filing, and posting as aforesaid of a new schedule or schedules which shall become effective not earlier than thirty days after date of posting and filing thereof with the Federal Maritime Commission and such schedule or schedules shall plainly show the changes proposed to be made in the schedule or schedules then in force and the time when the rates, fares, charges, classifications, rules, or regulations as changed are to become effective: *Provided,* That no general increase in rates or general decrease in rates shall take effect before the close of the sixtieth day after the day on which such general increase in rates or general decrease in rates is posted and filed with the Commission: *Provided further,* That the Commission may, in its discretion and for good cause, allow changes upon less than the period of thirty days or sixty days herein specified: *And provided further,* That schedules or changes which provide for extension of actual service to additional ports at rates of said carrier already in effect for similar service at the nearest port of call to said additional ports shall become effective immediately upon notice to the Commission.

[See main edition for text of third to fifth pars.]

(As amended Oct. 18, 1978, Pub. L. 95-475, § 2, 92 Stat. 1494.)

AMENDMENTS

1978—Pub. L. 95-475 added proviso that no general increase or decrease in rates will take effect before the close of the sixtieth day after the day on which such increase or decrease is posted and filed with the Commission and inserted "or sixty days" following "thirty days" in proviso authorizing the Commission to allow changes in certain cases upon less than a thirty or sixty day period.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-475 effective ninety days after Oct. 18, 1978, see section 5 of Pub. L. 95-475, set out as an Effective Date of 1978 Amendment note under section 843 of this title.

§ 845. Changes in the schedule of rates

(a) Hearings on new schedules; publication; guidelines

Whenever there shall be filed with the Federal Maritime Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation on practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon protest or upon its own initiative without protest, and if it so orders without answer or other formal pleadings by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The Commission shall not order a hearing pursuant to this subsection, on its own motion or upon protest, unless the Commission publishes in the Federal Register the reasons, in detail, why it considers such a hearing to be necessary and the specific issues to be resolved by such hearing. For purposes of facilitating the administration of this chapter, the Commission shall, within one year after October 18, 1978, by regulation prescribe guidelines for the determination of what constitutes a just and reasonable rate of return or profit for common carriers by water in intercoastal commerce. After the regulations referred to in the preceding sentence are initially prescribed, the Commission shall from time to time thereafter review such regulations and make such amendments thereto as may be appropriate.

(b) Suspension of rates pending hearings; burden of proof; time limits; issuance of final decision; conferences

Pending such hearing and the decision thereon the Federal Maritime Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may, except as provided in subsection (c) of this section, from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and eighty days beyond the time when it would otherwise go into effect; and after full hearing whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period. At any hearing under this paragraph the burden of proof to show that the rate, fare, charge, classification, regulation, or practice is just and reasonable shall

be upon the carrier or carriers. The Commission shall give preference to the hearing and decision of such questions. Nothwithstanding any other provision of law, the Commission shall complete such hearing under this section within sixty days; the initial decision resulting therefrom, if any, shall be submitted in writing to the Commission within one hundred and twenty days; and the Commission shall issue a final decision thereon within one hundred and eighty days. The sixty-day, one hundred and twenty-day, and one hundred and eighty-day periods referred to in the preceding sentence shall each begin on the day on which such rate, fare, charge, classification, regulation, or practice first takes effect or, in the case of suspended matter, shall begin on the day on which such matter would have otherwise gone into effect. However, the Commission may, in its discretion and for good cause, extend the time period or suspension period for a period of not more than sixty days, if three or more Commissioners agree to such an extension. If such extension is granted, the Commission shall report in writing to Congress within ten days from the granting of such extension together with—

(A) a full explanation of the reasons for the extension,

(B) the issues involved in the matter before the Commission,

(C) the names of the personnel of the Commission working on such matter, and

(D) a record of how each Commissioner voted on the extension.

If a final decision is not issued by the Commission within the one hundred and eighty day period, or by the end of any extension period, such rate, fare, charge, classification, regulation, or practice shall, for purposes of this section, thereafter be deemed to be just and reasonable. However, if the Commission finds that it is unable to issue a final decision within such period or within such extension due to delays which are directly attributable to the proponent of such rate, charge, classification, regulation, or practice, the Commission may disapprove such rate, fare, charge, classification, regulation, or practice, upon the expiration of such period or extension. This provision shall not preclude any remedies available pursuant to section 821 of this title. Notwithstanding any other provision of law, in providing a hearing for the purposes of this chapter, it shall be adequate to provide an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties. Any such conference may be chaired by an individual Commissioner, an administrative law judge, or any designated employee of the Commission.

(c) Prohibition of certain suspensions; refunds

(1) Notwithstanding any other provision of this section, the Commission may not suspend—

(A) any tariff schedule or service which extends to any additional port, actual service at the rates of the carrier involved for similar service already in effect at the nearest port of call to such additional port; or

(B) the operation of that portion of any changed rate, fare, or charge representing an increase or decrease of 5 per centum or less and filed as part of a general increase in rates or a general decrease in rates, except that the aggregate of such changes exempt from suspension shall not exceed 5 per centum during any period of twelve consecutive months; nothing in this subparagraph shall be construed as establishing a presumption that any increase or decrease in excess of 5 per centum is not just and reasonable, or that any increase or decrease less than 5 per centum is just and reasonable.

(2) If the Commission finds, as a result of any proceeding under this section with respect to a general increase in rates, that any unsuspended portion of the increase is not just and reasonable, the Commission shall order the carrier involved to refund to any person who was charged on the basis of such general increase an amount equal to that portion thereof found to be not just and reasonable plus interest on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the refund applies.

(As amended Oct. 18, 1978, Pub. L. 95-475, § 3, 92 Stat. 1494.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-475, § 3(1), (2), designated first existing unnumbered paragraph as subsec. (a), and in subsec. (a) as so designated, substituted "protest" for "complaint" in two places, deleted provision prohibiting suspension of a tariff schedule or service which extended to additional ports, and added provisions prohibiting the Commission from ordering hearings without publication in the Federal Register of the reasons for the hearing and the issues to be discussed, authorizing the prescription of guidelines for the determination of just and reasonable rates of return and profit for common carriers by water, and requiring the Commission to periodically review and revise said guidelines.

Subsec. (b). Pub. L. 95-475, § 3(3), (4), designated second existing unnumbered paragraph as subsec. (b), and, in subsec. (b) as so designated, inserted "except as provided in subsection (c) of this section" preceding "from time to time", substituted "one hundred and eighty days" for "four months" following "longer period than", deleted "and decide the same as speedily as possible" following "decision of such questions", and added provisions prescribing time limits for the completion of Commission hearings and submission of the resulting initial and final Commission decisions, authorizing extensions of such time limits in the discretion of the Commission, discussing the consequences of the inability of the Commission to issue a final decision whether or not caused by undue delay attributable to actions of the proponents of the rates or practices at issue, and authorizing the submission of evidence in written form and conferences between the concerned parties.

Subsec. (c). Pub. L. 95-475, § 3(5), added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-475 effective ninety days after Oct. 18, 1978, see section 5 of Pub. L. 95-475, set out as an Effective Date of 1978 Amendment note under section 843 of this title.

§ 845a. Unjust or unreasonable rates; reasonable maximum and minimum rates ordered by Commission

Whenever the Federal Maritime Commission finds that any rate, fare, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any carrier subject to the provisions of this chapter is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice: *Provided,* That the mimimum-rate provision of this section shall not apply to common carriers on the Great Lakes: *Provided further,* That upon such finding of unjustness or unreasonableness in a proceeding instituted by a complainant pursuant to the provisions of section 821 of this title, the Commission shall direct full reparation to the complainant of the difference between the charge collected and the just and reasonable rate, fare, or charge, plus interest on such amount computed on the basis of the average of the prime rate charged by major banks, as published by the Board of Governors of the Federal Reserve System, during the period to which the reparation applies.

(As amended Oct. 18, 1978, Pub. L. 95-475, § 4, 92 Stat. 1496.)

AMENDMENTS

1978—Pub. L. 95-475 added proviso directing the Commission to make full reparation to a complainant where there was a proceeding finding of unjustness or unreasonableness and prescribing the method of computation of the amount of such reparation.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-475 effective ninety days after Oct. 18, 1978, see section 5 of Pub. L. 95-475, set out as an Effective Date of 1978 Amendment note under section 843 of this title.

CHAPTER 24—MERCHANT MARINE ACT, 1920

§ 876. Power of Secretary and Commission to make rules and regulations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 883. Transportation of merchandise between points in United States in other than domestic built or rebuilt and documented vessels

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by section 13 or 808 of this title: *Provided,* That no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: *Provided further,* That no vessel of more than five hundred gross tons which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its territories (not including trust territories), or its possessions: *Provided further,* That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further,* That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Secretary of Commerce shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: *Provided further,* That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as a part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Interstate Commerce Commission, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is, with the approval of the Interstate Commerce Commission, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: *Provided further,* That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by

vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 1322(a) of title 19, if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade: *Provided further,* That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade: *Provided further,* That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to November 16, 1979, and (2) shall not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions.

(As amended Oct. 3, 1978, Pub. L. 95–410, title II, § 213, 92 Stat. 904; Nov. 16, 1979, Pub. L. 96–112, § 4, 93 Stat. 848.)

AMENDMENTS

1979—Pub. L. 96–112 added proviso that, until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by citizens of the United States could, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement had either a foreign origin or a foreign destination, but that the proviso would apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to Nov. 16, 1979, and would not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions.

1978—Pub. L. 95–410, in first sentence, substituted "forfeiture of merchandise" for "forfeiture thereof" and inserted parenthetical text for forfeiture of a monetary amount up to the value of the merchandise as determined by the Secretary of the Treasury to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons transporting or causing the merchandise to be transported.

TRANSPORTATION OF MERCHANDISE OR PASSENGERS WITHIN ALASKA BY FOREIGN BUILT HOVERCRAFT

Pub. L. 95–599, title I, § 146, Nov. 6, 1978, 92 Stat. 2714, provided that:

"(a) Effective during the five-year period beginning on the date of enactment of this Act [Nov. 6, 1978], nothing in section 27 of the Merchant Marine Act, 1920 [this section], or any other provision of law restricting the coastwise trade to vessels of the United States shall prohibit the transportation within the State of Alaska of merchandise or passengers by foreign built hovercraft.

"(b) For the purpose of this section the term 'hovercraft' means a vehicle which travels over land or water in a cushion of air generated by such vehicle."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 316, 391a, 883–1 of this title; title 19 section 1554; title 50 App. section 1745.

§ 883–1. Corporation as citizen; fisheries and transportation of merchandise or passengers between points in United States; parent and subsidiary corporations; domestic built vessels; certificate; surrender of documents on change in status

CODIFICATION

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, part III of which was classified to chapter 12 (§ 901 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

§ 884. Charges for transportation subject to Interstate Commerce provisions

CODIFICATION

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended,

which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

CHAPTER 25—SHIP MORTGAGES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 18, 1011, 1014, 1114, 1225, 1271 of this title; title 15 section 1014; title 49 section 11303.

SUBCHAPTER I—DEFINITIONS

§ 911. Words and terms used in chapter

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 section 1110.

SUBCHAPTER III—RECORDING OF SALES, CONVEYANCES, AND MORTGAGES OF VESSELS OF THE UNITED STATES

§ 922. Preferred mortgages

(a) Requirements

A valid mortgage which at the time it is made, includes the whole of any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel, of less than twenty-five gross tons), shall, in addition, have, in respect to such vessel and as of the date of the compliance with all the provisions of this subsection, the preferred status given by the provisions of section 953 of this title, if—

[*See main edition for text of (1) to (4)*]

(5) The mortgagee is a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or is a citizen of the United States, and for the purposes of this chapter the Reconstruction Finance Corporation shall, in addition to those designated in sections 888 and 802 of this title, be deemed a citizen of the United States.

[*See main edition for text of (b) to (f)*]

(As amended Nov. 16, 1979, Pub. L. 96-112, § 5, 93 Stat. 849.)

AMENDMENTS

1979—Subsec. (a)(5). Pub. L. 96-112 substituted "The mortgagee is a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or is a citizen of the United States, and for the purposes of this chapter" for "The mortgagee is a citizen of the United States and for the purposes of this section".

CHAPTER 27—MERCHANT MARINE ACT, 1936

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

Sec.
1247. Appointment of Secretary as trustee or receiver; operation of vessels under court orders; payment of operating costs; claims against corporation [New].

SUBCHAPTER II—CREATION AND FUNCTIONS OF MARITIME AGENCIES

§ 1119. Authorization of appropriations

[*See main edition for text of (a)*]

(b) Notwithstanding any other provision of this chapter or any other law, there are authorized to be appropriated after December 31, 1967, for the use of the Maritime Administration for—

[*See main edition for text of (1) to (6)*]

(7) financial assistance to State Marine Schools;

(8) the Vessel Operations Revolving Fund;

(9) expenses necessary for extension and correspondence courses authorized under section 1126(c) of this title; and

(10) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, or general administration;

only such sums as the Congress may specifically authorize by law: *Provided, however,* That the Congress finds and declares that the national policy set forth in section 1101 of this title requires that there should be authorized and appropriated for fiscal years 1971 through 1980 such sums as may be necessary to construct 300 ships of such sizes, types and designs as the Secretary of Commerce may consider best suited to carry out the purposes and policy of this chapter.

(As amended Nov. 12, 1977, Pub. L. 95-173, § 6(a), 91 Stat. 1360.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-173 added pars. (9) and (10).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 6(b) of Pub. L. 95-173 provided that: "The amendment made by subsection (a) of this section [amending this section] shall be effective for fiscal years beginning after September 30, 1978."

§ 1126. Training of Merchant Marine personnel

[*See main edition for text of (a)*]

(b) Merchant Marine Academy; maintenance; training; appointments; allowances; definitions

(1) The Secretary of Commerce shall maintain a Merchant Marine Academy at Kings Point, New York, for the instruction and preparation for service in the merchant marine of selected persons as officers thereof. Competitive examinations shall be held annually among those persons nominated as candidates to the Academy by Senators and Representatives, and

by the Governors of the Canal Zone and American Samoa. The number of vacancies allocated to each State shall be proportioned to the representation in Congress from that State; but two vacancies shall be allocated each year to the Canal Zone, to be filled by qualified candidates nominated by the Governor of the Canal Zone from among the sons of residents of the Canal Zone and the sons of personnel of the United States Government and the Panama Canal Company residing in the Republic of Panama, one vacancy each shall be allocated each year to Guam, American Samoa, and the Virgin Islands, and four vacancies shall be allocated each year to the District of Columbia: *Provided,* That a candidate nominated by the Governor of American Samoa shall not be denied admission by reason of his being a national but not a citizen of the United States: *Provided further,* That the foregoing proviso shall not be construed to permit any such person who is a national but not a citizen of the United States to be entitled to any office or position in the United States merchant marine by reason of his graduation from the Academy until such person shall have become a citizen. Appointments from each State shall be made by the Secretary of Commerce from among qualified candidates nominated from that State in the order of merit established by the examinations. In case vacancies remain after the appointments under the preceding sentence have been made, the Secretary of Commerce shall fill them by appointments from qualified candidates from other States.

[*See main edition for text of (2) to (4)*]

(5)(a) "Representative" as used in this chapter shall include Delegates to the House of Representatives from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from the Commonwealth of Puerto Rico.

(b) "State" as used in this chapter shall include the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, and the Virgin Islands.

(c) Extension and correspondence courses; authorization of purchases

The Secretary of Commerce is authorized to prescribe, conduct, and supervise such extension and correspondence courses as he may deem necessary to supplement other training facilities, and to make such courses available, under such rules and regulations and upon such terms as he may prescribe, to the licensed and unlicensed personnel of the merchant marine, and to cadets and cadet officers, who shall make application therefor. The Secretary of Commerce is further authorized to print, publish, and purchase suitable textbooks, equipment, and supplies required for such courses, and to employ persons, firms, and corporations on a contract or fee basis (without regard to the provisions of section 5 of title 41), for the performance of special services deemed necessary by the Secretary of Commerce in the preparation and editing of such textbooks and other aids to instruction, and in the supervision and administration of such courses.

(d) Cooperation of governmental agencies

The Secretary of Commerce, with the consent of any executive department, independent establishment, or other agency of the Government, including any field service thereof, may avail himself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this section, as amended.

[*See main edition for text of (e) and (f)*]

(As amended Nov. 12, 1977, Pub. L. 95-173, § 7, 91 Stat. 1360; July 28, 1978, Pub. L. 95-323, § 1, 92 Stat. 396.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-323, § 1(1), (2), struck out provisions authorizing holding of competitive examinations by the Governors of Guam and the Virgin Islands and the Commissioner of the District of Columbia, and provisions requiring the vacancies allocated to Guam, American Samoa, and the Virgin Islands to be filled with nominees of the respective Governors and vacancies allocated to the District of Columbia to be filled with nominees of the Commissioner.

Subsec. (b)(5)(a). Pub. L. 95-323, § 1(3), added references to the District of Columbia, Guam, and the Virgin Islands, and struck out references to Alaska and Hawaii, which for purposes of codification had been omitted in view of admission of the Territories as States into the Union.

Subsec. (b)(5)(b). Pub. L. 95-323, § 1(4), struck out references to the Territories of Alaska and Hawaii, which for purposes of codification had been omitted in view of admission of such Territories as States into the Union.

1977—Subsecs. (c), (d). Pub. L. 95-173 substituted "Secretary of Commerce" for "Commission" wherever appearing therein. "Secretary of Commerce" and "Secretary" had previously been substituted for "Commission" on authority of 1950 Reorg. Plan No. 21 and section 1244(e) of this title. See Transfer of Functions note set out under this section in the main edition.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1386 of this title.

SUBCHAPTER V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

§ 1159. Vessels to be operated in domestic trade; terms and conditions of construction aid and sale to purchaser

Any citizen of the United States may make application to the Secretary of Commerce for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Commerce, the vessel may be con-

structed under the terms and conditions of this subchapter, but no construction-differential subsidy shall be allowed. The Secretary of Commerce shall pay for the cost of national-defense features incorporated in such vessel. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Commerce not less than 12½ per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Commerce not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-five equal annual installments, with interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Commerce to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Commerce may determine: *Provided,* That, notwithstanding any other provisions of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 1153 of this title, may, with the approval of the Secretary of Commerce, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.

(As amended Nov. 12, 1977, Pub. L. 95-173, § 8, 91 Stat. 1360; Oct. 24, 1978, Pub. L. 95-505, 92 Stat. 1755.)

AMENDMENTS

1978—Pub. L. 95-505 substituted "ten knots" for "fourteen knots".

1977—Pub. L. 95-173 inserted ", or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots" following "less than eight knots".

§ 1160. Acquisition of obsolete vessels

[*See main edition for text of (a) to (h)*]

(i) Exchange of vessels; valuation; scrapping of traded out vessels

The Secretary of Commerce is authorized to acquire mariner class vessels constructed under subchapter VII of this chapter and Public Law 911, Eighty-first Congress, and other suitable vessels, constructed in the United States, which have never been under foreign documentation, in exchange for obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the trade-in and trade-out vessels shall be valued at the higher of their scrap value in domestic or foreign markets as of the date of the exchange: *Provided,* That in any exchange transactions, the value assigned to the traded-in and traded-out vessels will be determined on the same basis. The value of the traded-out vessels shall be as nearly as possible equal to the value of the traded-in vessel plus the fair value of the cost of towing the traded-out vessel to the place of scrapping. To the extent the value of the traded-out vessel exceeds the value of the traded-in vessel plus the fair value of the cost of towing, the owner of the traded-in vessel shall pay the excess to the Secretary of Commerce in cash at the time of exchange. This excess shall be deposited into the Vessel Operations Revolving Fund and all costs incident to the lay-up of the vessels acquired under this chapter may be paid from balances in the Fund. No payments shall be made by the Secretary of Commerce to the owner of any traded-in vessel in connection with any exchange under this subsection. Notwithstanding the provisions of sections 808 and 835 of this title, vessels traded out under this subsection may be scrapped in approved foreign markets. The provision of this subsection (i) as it read prior to the 1975 amendment shall govern all transactions made thereunder prior to that amendment.

[*See main edition for text of (j)*]

(As amended Nov. 15, 1977, Pub. L. 95-177, 91 Stat. 1368.)

AMENDMENTS

1977—Subsec. (i). Pub. L. 95-177 struck out ", within two years after the enactment of this subsection," following "is authorized" and "that are scheduled for scrapping" following "National Defense Reserve Fleet", inserted "and other suitable vessels, constructed in the United States, which have never been under foreign documentation," following "Eighty-first Congress,", and substituted "the trade-in and trade-out vessels" for "the traded-in and traded-out vessels" and "the 1975 Amendment" for "this amendment".

SECRETARY OF COMMERCE AUTHORIZED TO PURCHASE STEAMSHIP UNITED STATES; REQUISITION OR PURCHASE BY UNITED STATES

Pub. L. 92-296, § 2, May 16, 1972, 86 Stat. 140, as amended by Pub. L. 94-536, Oct. 17, 1976, 90 Stat. 2497; Pub. L. 96-111, § 2, Nov. 15, 1979, 93 Stat. 846, provided that: "The Secretary of Commerce is author-

ized and directed to purchase the steamship United States, as is, where is, at the depreciated cost of the vessel to the owner, as determined by the Secretary of Commerce, less the unpaid principal and interest on the mortgage on the vessel, for layup in the National Defense Reserve Fleet and operation for the account of any agency or department of the United States during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936 [section 1242 of this title], and/or for sale or charter to a qualified operator for operation under the American flag in the coastwise and/or foreign commerce of the United States and/or between foreign ports notwithstanding the provision of section 506 of the Merchant Marine Act, 1936 [section 1156 of this title]: *Provided*, That for hire carriage in coastwise commerce of the United States is limited to passengers, their accompanying baggage, and one thousand measurement tons of cargo, of forty cubic feet each, per annum in any single coastwise trade: *Provided further*, That for hire carriage of cargo in excess of the aforesaid one thousand tons shall be unlawful, or for use as a floating hotel in or on the navigable waters of the United States. Whenever the conditions set forth in section 902, the Merchant Marine Act of 1936 [section 1242 of this title], exist, the vessel may be requisitioned or purchased by the United States and just compensation for title or use, as the case may be, shall be paid in accordance with section 902 of the Merchant Marine Act, as amended (46 U.S.C. 1242). The depreciated cost of the vessel to the owner shall be computed on the schedule adopted by the Internal Revenue Service for income tax purposes. Such determination shall be final. The Secretary of Commerce shall require the owner of the vessel to agree that it will pay all existing private obligations related to the vessel, and that it will commit an amount equal to the net proceeds received from such sale in excess of existing obligations and expenses incident to the sale, within a reasonable period not to exceed twelve months of receipt, as equity capital for the construction of new vessels which the Secretary determines are built to effectuate the purposes and policy of the Merchant Marine Act, 1936, as amended [this chapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 1059; title 50 App. section 1741.

§ 1161. Reserve funds for construction or acquisition of vessels; taxation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 543, 1024, 1059; title 50 App. section 1741.

SUBCHAPTER VI—OPERATING-DIFFERENTIAL SUBSIDY

§ 1177. Capital construction fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1177-1, 1244 of this title; title 26 sections 46, 128, 543.

SUBCHAPTER VII—PRIVATE CHARTER OPERATION

§ 1206. Construction of nuclear-powered merchant ship; appropriations; special services; cooperation with other Federal agencies

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

§ 1241. Transportation in American vessels of Government personnel and certain cargoes

EXEMPTIONS

Export sales of certain agricultural commodities, see section 1707a of Title 7, Agriculture.

§ 1241-1. Shipment of exports financed by Government in United States vessels

EXEMPTIONS

Export sales of certain agricultural commodities, see section 1707a of Title 7, Agriculture.

§ 1247. Appointment of Secretary as trustee or receiver; operation of vessels under court orders; payment of operating costs; claims against corporation

(a) Notwithstanding any other provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court, upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of this chapter, may constitute and appoint the Secretary of Commerce as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Secretary as trustee or receiver shall become effective upon the ratification thereof by the Secretary without a hearing, unless the Secretary shall deem a hearing necessary. In no such proceeding shall the Secretary be constituted as trustee or receiver without the Secretary's express consent.

(b) If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Secretary certifies to the court that the continued operation of such vessel is, in the opinion of the Secretary, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of this chapter, the court may permit the Secretary to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Secretary, if the Secretary undertakes to pay all operating losses resulting from such operatiion, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty

Act [46 U.S.C. 741 et seq.]. The Secretary shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Secretary may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Secretary on account of the operation of such vessels.

(June 29, 1936, ch. 858, § 908, as added Nov. 6, 1978, Pub. L. 95-598, title III, § 334, 92 Stat. 2680.)

REFERENCES IN TEXT

The Suits in Admiralty Act, referred to in subsec. (b), is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, which is classified generally to chapter 20 (§ 741 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 741 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SUBCHAPTER XI—FEDERAL SHIP MORTGAGE INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1160, 1161 of this title.

§ 1273. Authorization of Secretary to guarantee obligations

[*See main edition for text of* (a) *to* (e)]

(f) Limitation on outstanding amount

The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed $10,000,000,000.

(As amended June 26, 1978, Pub. L. 95-298, § 5, 92 Stat. 340.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-298 increased limitation on amount of outstanding obligations from $7,000,000,000 to $10,000,000,000.

§ 1274. Eligibility for guarantee

[*See main edition for text of* (a)]

(b) Contents of obligations

Obligations guaranteed under this subchapter—

[*See main edition for text of* (1)]

(2) subject to the provisions of paragraph (1) of subsection (c) of this section, shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary of Commerce, of the vessel which is used as security for the guarantee of the Secretary of Commerce: *Provided, however,* That in the case of a vessel, the size and speed of which are approved by the Secretary of Commerce, and which is or would have been eligible for mortgage aid for construction under section 1159 of this title (or would have been eligible for mortgage aid under section 1159 of this title except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87½ per centum of such actual cost or depreciated actual cost: *Provided, further,* That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost thereof: *Provided, further,* That in the case of any vessel to be used in the fishing trade or industry, such obligations may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost of the vessel;

[*See main edition for text of* (3) *to* (7); (c) *to* (h)]

(As amended Apr. 7, 1978, Pub. L. 95-257, 92 Stat. 194.)

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-257 added proviso relating to vessels to be used in the fishing trade or industry.

CHAPTER 31—MARITIME ACADEMY PROGRAM

§ 1382. Vessels for maritime academies

[*See main edition for text of* (a) *to* (c)]

(d) Payment of fuel costs

The Secretary may pay additional amounts to assist in paying for the cost of fuel oil consumed during training cruises of the vessels referred to in subsection (a) of this section.

(As amended Pub. L. 95-298, § 4, June 26, 1978, 92 Stat. 340.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-298 added subsec. (d).

§ 1383. Contracts for assistance

The Secretary may enter into agreements with not more than one maritime academy or college, which meets the requirements of this chapter, in each State or Territory, to make annual payments to such academy or college for not in excess of four years in the case of each such agreement, to be used for the maintenance and support of such academy or college. Such payments for any year to any maritime academy or college shall be an amount equal to the amount furnished to such academy or college for its maintenance and support by the State or Territory in which such academy or college is located, except that such payments to any academy or college for any year shall

not exceed $100,000 or $25,000 if such academy or college does not meet the requirement of section 1384(b) of this title.

(As amended Pub. L. 95-173, § 4, Nov. 12, 1977, 91 Stat. 1359.)

AMENDMENTS

1977—Pub. L. 95-173 substituted "$100,000" for "$75,000".

§ 1385. Subsistence payments

(a) The Secretary may enter into agreements, with each academy or college with which he contracts under section 1383 of this title to make payments, at a rate not in excess of $1,200 per academic year per student, to such academy or college, with respect to each student attending such academy or college. Such payments (1) shall be used to assist in defraying the cost of uniforms, books, and subsistence for such student, (2) shall commence to accrue on the day such student begins his first term of work at such academy or college, and (3) shall be paid to such academy or college in such installments as the Secretary shall prescribe, while such student is in attendance and until the completion of his course of instruction, but in no event for more than four academic years for any one student.

[*See main edition for text of (b)*]

(As amended Pub. L. 95-173, § 5, Nov. 12, 1977, 91 Stat. 1359.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-173 substituted "$1,200" for "$600".

CHAPTER 33—COORDINATED NATIONAL BOATING SAFETY PROGRAM

§ 1479. Authorization of appropriations for State boating safety programs

For the purpose of providing financial assistance for State boating safety programs there is authorized to be appropriated $7,500,000 for each of the fiscal years beginning with fiscal year 1972 through fiscal year 1976; $2,500,000 for the fiscal transition period of July 1, 1976, through September 30, 1976; and $10,000,000 for each of the fiscal years 1977, 1978, 1979, and 1980, such appropriations to remain available until expended.

(As amended Pub. L. 95-308, § 4, June 30, 1978, 92 Stat. 358.)

AMENDMENTS

1978—Pub. L. 95-308 added provisions authorizing appropriations for the fiscal years 1979 and 1980.

CHAPTER 34—SAFE CONTAINERS FOR INTERNATIONAL CARGO [NEW]

Sec.
1501. Definitions.
1502. Duties of owners of containers.
(a) Initial approval of containers; periodic examination.
(b) Approval of existing containers.
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(b) Amendment of Convention annexes.
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§ 1501. Definitions

As used in this chapter—

(a) The term "Secretary" means the Secretary of Transportation.

(b) The term "Convention" means the International Convention for Safe Containers, and the annexes thereto, done at Geneva, Switzerland, December 2, 1972.

(c) The term "container" shall have the same meaning as that term is defined in the Convention.

(d) The term "international transport" means the transportation of a container—

(1) to any place within the jurisdiction of the United States from a place within a foreign country;

(2) by United States carriers between two points both of which are outside of the United States; or

(3) from any place within the jurisdiction of the United States to any place within a foreign country.

(e) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(f) The term "new container" means a container (other than a container specially designed for air transport) which is used or is designed for use in international transport, the construction of which began on or after September 6, 1977.

(g) The term "existing container" means a container (other than a container specially designed for air transport) which is used or is de-

signed for use in international transport and which is not a new container.

(h) The term "owner" means a person who owns a container, or, if a written lease or bailment provides for the lessee or bailee to exercise the owner's responsibility for maintaining and examining the container, the lessee or bailee of a container, to the extent such agreement so provides.

(i) The term "safety approval plate" shall have the same meaning as that term is defined in annex I of the Convention.

(Pub. L. 95-208, § 2, Dec. 13, 1977, 91 Stat. 1475.)

SHORT TITLE

Section 1 of Pub. L. 95-208 provided: "That this Act [enacting this chapter] may be cited as the 'International Safe Container Act'."

§ 1502. Duties of owners of containers

(a) Initial approval of containers; periodic examination

Beginning on the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, for new containers, and beginning on September 6, 1982, for existing containers, the owner of each such container—

(1) who is domiciled and has his principal office in the United States, shall have each such container initially approved in accordance with the procedure established by the Secretary or by the administration of another contracting party to the Convention; and shall, thereafter, have each such container periodically examined, as provided in the Convention, in accordance with the procedure established by the Secretary; and

(2) who is either domiciled or has his principal office in the United States, shall have each such container initially approved in accordance with the procedure established by the Secretary or by the administration of another contracting party to the Convention; and shall, thereafter, have each such container periodically examined, as provided in the Convention, in accordance with the procedure established by the administration of either the country where he is domiciled or has his principal office (so long as such country is a party to the Convention).

Any owner of either a new or existing container who is neither domiciled nor maintains a principal office in the United States, or in any other country which is a party to the Convention, may submit their containers for approval and periodic examination according to the procedure established by the Secretary.

(b) Approval of existing containers

During the period beginning on the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, and before September 6, 1982, an owner of an existing container may have such container approved according to the procedure established by the Secretary, and have a safety approval plate affixed to it, if such container is found to meet the standards of the Convention.

(Pub. L. 95-208, § 3, Dec. 13, 1977, 91 Stat. 1476.)

§ 1503. Duties of Secretary of Transportation

(a) Enforcement

On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, the Secretary shall enforce and carry out the provisions of the Convention, and, unless an earlier date is specifically provided, the provisions of this chapter, in the United States.

(b) Regulations

The Secretary shall, as soon as practicable after December 13, 1977, promulgate, and from time to time, amend, those regulations he deems necessary for such enforcement. Such regulations, among other things, shall—

(1) establish procedures for the testing, inspection, and initial approval of existing and new containers and of designs for new containers, including procedures relating to the affixing, invalidating, and removal of safety approval plates for containers;

(2) establish procedures to be followed by owners of containers relating to the periodic examination of containers, as provided in the Convention; and

(3) provide a method for developing, collecting, and disseminating data concerning container safety and the international transport of containers.

(c) Affixation of approval plate; delegation of authority; fees

At any time after December 13, 1977, the Secretary may—

(1) authorize the affixation of a safety approval plate to any container which, after examination, is found not to have a safety approval plate attached to it and which the owner has established meets the standards of the Convention;

(2) delegate and withdraw the delegation of authority to initially approve existing and new containers and designs for new containers, and to authorize the affixing of safety approval plates; and

(3) establish a schedule of fees to be charged and collected for services performed by the Secretary, or under authority delegated by the Secretary, relating to the testing, inspection, and initial approval of containers and container designs.

(d) Method of delegating authority

Those delegations made under subsection (c)(2) of this section may be made to any person, including any public or private agency or nonprofit organization. The Secretary [1] before making any delegation under such subsection, shall promulgate regulations relating to—

(1) the criteria to be followed in selecting a person, public or private agency, or nonprofit organization as a recipient of delegated functions under such subsection;

(2) the manner in which such recipient shall carry out such delegated functions, in-

[1] So in original. Probably should be followed by a comma.

cluding the records such recipient must keep, and a detailed description of the exact functions such recipient may exercise; and

(3) the review that will be carried out by the Secretary to determine that any recipient of delegated functions is performing properly the functions so delegated.

No recipient of authority delegated under such subsection may assess or collect, or attempt to assess or collect, any penalty for violation of any provision of this chapter, the Convention, or any order of the Secretary issued under this chapter, or issue or attempt to issue any detention or other order. Any records required to be kept by regulations promulgated by the Secretary under this subsection shall be available to the Secretary, for inspection, upon request. The name and address of the recipient, if other than the owner, together with the functions so delegated and the period of designation, shall be published in the Federal Register and otherwise publicized as appropriate.

(e) Intermodal transport

The Secretary shall, to the maximum possible extent, encourage the development and use of intermodal transport, using containers constructed to facilitate economical, safe, and expeditious handling of containerized cargo without intermediate reloading while such cargo is in transport over land, air, and sea areas.

(Pub. L. 95–208, § 4, Dec. 13, 1977, 91 Stat. 1476.)

§ 1504. Areas of enforcement

(a) Examination of containers; detention orders; restriction or removal of containers from service

(1) On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, to ensure compliance with this chapter, and with the Convention, the Secretary may—

(A) examine, or require to be examined, new containers, and existing containers which are subject to this chapter, in international transport, and test, inspect, and approve designs for new containers and new containers being manufactured;

(B) issue a detention order removing or excluding a container from service until the owner of the container establishes to the Secretary's satisfaction that the container meets the standards of the Convention, if the container is subject to this chapter and does not have a valid safety approval plate attached to it, or if there is significant evidence that such a container bearing a safety approval plate is in a condition which creates an obvious risk to safety; and

(C) take whatever other appropriate action he deems necessary, including issuance of any necessary orders, to remove the container involved from service, or restrict its use, in those instances where he finds that a container is not in compliance with the provisions of this chapter or the Convention but does not present an obvious risk to safety.

The Secretary may permit the movement to another location of a container which he finds to be unsafe or which does not have a valid safety approval plate affixed to it, under whatever restriction he considers necessary and consistent with the intent of the Convention, for repair or other appropriate disposition.

(2) Beginning on September 6, 1982, the Secretary may examine or require to be examined any existing container in international transport.

(b) Costs of examinations

The owner of the container involved in any action taken by the Secretary under this section with respect to an examination of a container, shall pay for or reimburse the Secretary for expenses arising from such actions, except for the costs of routine examinations of containers or safety approval plates. In addition, the owner of containers submitted to the procedure established by the Secretary for testing, inspection, and initial approval, and the manufacturers who submit designs of containers to the procedures established by the Secretary for testing, inspection, and initial approval shall pay for or reimburse the Secretary for the expenses arising from such testing, inspection or approval. Funds received by the Secretary in reimbursement shall be credited to the appropriations bearing the cost thereof.

(c) Presumption of safe condition

A container bearing a safety approval plate authorized by a country which is a party to the Convention shall be presumed to be in a safe condition unless there is significant evidence that the container creates an obvious risk to safety.

(d) Notification of detention or other order; duration of order

Whenever the Secretary issues a detention or other order under this section, he shall promptly notify, in writing, either the owner of the container subject to such order, his agent, or, when the identity of such owner is not apparent from the container of shipping documents, the custodian. The notification shall reasonably identify the container involved, give the location of the container, and reasonably describe the condition or situation which gave rise to the order. An order issued by the Secretary under this section shall remain in effect until the container is declared by the Secretary, or under regulations promulgated by the Secretary, to be in compliance with the standards of the Convention, or until it is permanently removed from service, whichever first occurs.

(e) Notification to foreign country of defect at time of approval

If there is reason to believe that a container to which there is affixed a safety approval plate issued by a foreign country was defective at the time of approval, the Secretary shall notify the country which issued the approval of such defect.

(Pub. L. 95–208, § 5, Dec. 13, 1977, 91 Stat. 1477.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1505 of this title.

§ 1505. Penalties

(a) Civil penalty

On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, any owner, agent, or custodian who—

(1) has been notified of an order issued by the Secretary under section 1504 of this title; and

(2) fails to take reasonable and prompt action to prevent or stop a container subject to that order from being moved in violation of that order;

shall be subject to a civil penalty of not more than $5,000 for each container so moved. Each day the container remains in service while the order is in effect shall be treated as a separate violation.

(b) Assessment, collection, remission, mitigation, and compromise of penalties

The Secretary shall assess and collect any penalty incurred under this section, and, in his discretion may remit, mitigate, or compromise any such penalty. No penalty shall be assessed until after the person charged has been given notice and an opportunity for a hearing. In assessing, remitting, mitigating, or compromising a penalty the Secretary shall consider the gravity of the violation, the hazards involved, and the record of the person charged with respect to violations of this chapter or of the Convention. Upon failure of any person to pay any penalty assessed against him by the Secretary, the Secretary shall request the Attorney General to begin an action in any district court of the United States to recover the amount of the penalty unpaid.

(Pub. L. 95–208, § 6, Dec. 13, 1977, 91 Stat. 1478.)

§ 1506. Employee protection

(a) Discrimination against a reporting employee prohibited

No person shall discharge or in any manner discriminate against an employee because the employee has reported the existence of an unsafe container or reported a violation of this chapter to the Secretary or his agents.

(b) Complaint alleging discrimination

An employee who believes that he has been discharged or discriminated against in violation of this section may, within 60 days after the violation occurs, file a complaint alleging discrimination with the Secretary of Labor.

(c) Investigation by Secretary of Labor; judicial relief

The Secretary of Labor may investigate the complaint and, if he determines that this section has been violated, bring an action in an appropriate United States district court. The district court shall have jurisdiction to restrain violations of subsection (a) of this section and to order appropriate relief, including rehiring and reinstatement of the employee to his former position with back pay.

(d) Notification to complainant of intended action

Within 30 days after the receipt of a complaint filed under this section the Secretary of Labor shall notify the complainant of his intended action regarding the complaint.

(Pub. L. 95–208, § 7, Dec. 13, 1977, 91 Stat. 1479.)

§ 1507. Amendments to Convention

(a) Proposed amendments; advice and consent of Senate; declaration of non-acceptance

The Secretary of State, with the concurrence of the Secretary, may propose amendments to the Convention or may request a conference for amending the Convention in accordance with article IX of the Convention. An amendment communicated to the United States in accordance with article IX(2) of the Convention may be accepted for the United States by the President, with the advice and consent of the Senate. The President may make a declaration that the United States does not accept an amendment.

(b) Amendment of Convention annexes

The Secretary of State, with the concurrence of the Secretary, may propose amendments to the annexes of the Convention, may propose a conference for amending annexes to the Convention and shall consider and act on amendments to the annexes of the Convention adopted by the Maritime Safety Committee and communicated to the United States in accordance with article X(2) of the Convention. If a proposed amendment is approved by the United States, the amendment shall enter into force in accordance with article X of the Convention. If any proposed amendment is objected to, the Secretary of State shall promptly communicate the objection as provided in article X(3) of the Convention.

(c) Appointment of arbitrator

The Secretary of State, with the concurrence of the Secretary, shall appoint an arbitrator when one is required to resolve a dispute within the meaning of article XIII of the Convention.

(Pub. L. 95–208, § 8, Dec. 13, 1977, 91 Stat. 1479.)

§ 1508. Authorization of appropriations

Beginning with the fiscal year ending September 30, 1979, and for each fiscal year thereafter, there are authorized to be appropriated such sums as are necessary to carry out the provisions of this chapter.

(Pub. L. 95–208, § 9, Dec. 13, 1977, 91 Stat. 1480.)